

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
IN TACOMA

SENTENCING

**BEFORE THE HONORABLE RONALD B. LEIGHTON
UNITED STATES DISTRICT COURT JUDGE**

January 20, 2017

APPEARANCES:

Todd Greenberg
Assistant United States Attorney
Representing the Plaintiff

**Mohammad Hamoudi
Linda Sullivan
Federal Public Defender's Office
Representing the Defendant**

01:31:49PM 1 THE CLERK: This is in the matter of the United
01:31:51PM 2 States of America versus Daniel Seth Franey,
01:31:54PM 3 Cause No. CR16-5073RBL. Counsel please make their
01:31:58PM 4 appearances.

01:32:00PM 5 MR. GREENBERG: Good afternoon, your Honor. Todd
01:32:02PM 6 Greenberg for the United States.

01:32:03PM 7 THE COURT: Good afternoon, Mr. Greenberg.

01:32:04PM 8 MR. HAMOUDI: Good afternoon, your Honor.

01:32:07PM 9 Mohammed Hamoudi from the Federal Defender's Office, here
01:32:11PM 10 on behalf of Mr. Franey, and Linda Sullivan, as well.

01:32:17PM 11 THE COURT: Good afternoon. Good afternoon,
01:32:19PM 12 Mr. Franey.

01:32:19PM 13 This matter is before the court for imposition of
01:32:21PM 14 sentence. I have reviewed the revised presentence report,
01:32:26PM 15 the sentencing recommendation; the United States'
01:32:31PM 16 sentencing memorandum, and the attachments; the
01:32:36PM 17 defendant's sentencing memorandum, and the attachments; I
01:32:41PM 18 have a copy of Mr. Franey's letter; and I have reviewed
01:32:52PM 19 the plea agreement. Are there any documents that I should
01:32:58PM 20 have reviewed that I have not?

01:33:00PM 21 MR. HAMOUDI: There is one supplemental filing,
01:33:02PM 22 your Honor, that we filed, I think, three days ago. It
01:33:05PM 23 was an additional support letter from Ms. Laura Hamilton.

01:33:13PM 24 THE COURT: I don't think I have that.

01:33:19PM 25 MR. HAMOUDI: I have a copy here, your Honor.

01:33:22PM 1 THE COURT: Thank you.

01:35:17PM 2 (Short pause in the proceedings.)

01:35:22PM 3 THE COURT: I have read the letter.

01:35:25PM 4 MR. HAMOUDI: Thank you, your Honor.

01:35:26PM 5 THE COURT: Now, counsel, did you have an

01:35:32PM 6 opportunity to review the sum and substance of the

01:35:37PM 7 presentence report with your client?

01:35:38PM 8 MR. HAMOUDI: We did, your Honor.

01:35:41PM 9 THE COURT: Mr. Franey, do you believe you

01:35:43PM 10 understand the recommendation outlined in the revised

01:35:48PM 11 presentence report?

01:35:49PM 12 THE DEFENDANT: Yes, sir.

01:35:50PM 13 THE COURT: Very well. Mr. Franey stands

01:35:54PM 14 convicted of Count 5, unlawful possession of machine guns.

01:35:59PM 15 The presentence report establishes a base offense level of

01:36:04PM 16 20; a two-level enhancement for the number of weapons,

01:36:07PM 17 five; the adjusted offense level is 22; three levels off

01:36:12PM 18 for acceptance of responsibility; a total offense level of

01:36:16PM 19 19; the criminal history category is two; the range is 33

01:36:20PM 20 to 41 months; the recommendation is for 18 months,

01:36:24PM 21 followed by three years' supervised release.

01:36:27PM 22 The government recommends 120 months. The defense

01:36:34PM 23 concurs with the presentence report for 18 months. That's

01:36:41PM 24 what I think I know. I will hear from Mr. Hamoudi.

01:36:47PM 25 MR. HAMOUDI: Thank you, your Honor. Your Honor,

01:36:51PM 1 if there is anything the court would like for me to first
01:36:54PM 2 address, I will. Otherwise, I want to break this up into
01:36:58PM 3 two portions. One, I want to talk about the nature and
01:37:01PM 4 circumstances of what occurred here, highlight what we
01:37:04PM 5 think is important, and how we got here today.

01:37:09PM 6 When we started on the case, we were assessing
01:37:13PM 7 certain issues having to do with entrapment. We were
01:37:17PM 8 addressing certain issues with Mr. Franey's understanding
01:37:20PM 9 of the law of possession of firearms. And we explained to
01:37:26PM 10 Mr. Franey that ignorance of the law is not a defense, and
01:37:30PM 11 passive possession certainly is not a defense here in the
01:37:33PM 12 Ninth Circuit. It may be in the D.C. Circuit, but it is
01:37:37PM 13 not in the Ninth Circuit.

01:37:38PM 14 The difficulty in mounting an entrapment defense was
01:37:43PM 15 the question of disposition, is then you are talking about
01:37:46PM 16 disposition of possession. It is an inanimate object that
01:37:52PM 17 you have come into contact with over your whole life, and
01:37:56PM 18 it becomes unlawful at some point in your life.

01:38:01PM 19 We believe the best solution was to resolve the case
01:38:04PM 20 as it was. And Mr. Franey came to the understanding, and
01:38:08PM 21 he admits to what he has done, that he knowingly came into
01:38:11PM 22 possession of these guns, even though he was prohibited
01:38:14PM 23 from doing so.

01:38:15PM 24 The nature of this conduct involved him operating as
01:38:20PM 25 a lookout for this gun-running on five separate instances.

01:38:27PM 1 The government places a lot of emphasis on
01:38:31PM 2 Mr. Franey's potential for being a future danger. But
01:38:34PM 3 what I submit to the court is to look at the offense
01:38:37PM 4 conduct, and that counters the government's conclusion.

01:38:42PM 5 Mr. Franey had the ability to take this money that he
01:38:45PM 6 made from these five trips and go out on his own, as the
01:38:52PM 7 court is aware, and purchase a firearm. They are very
01:38:56PM 8 easily purchased in the Washington area. He could have
01:38:58PM 9 gone to a gun show, he could have gone to a neighbor.

01:39:01PM 10 Rather, what he did, instead of purchasing a firearm,
01:39:04PM 11 he spent the money on his family, the family's needs. To
01:39:07PM 12 me that provides and demonstrates some insight into his
01:39:11PM 13 motivations, which is his providing for his family.

01:39:14PM 14 You know, he is given these five separate
01:39:18PM 15 opportunities where he is given the opportunity to handle
01:39:21PM 16 guns. He never takes any of those firearms home. The
01:39:24PM 17 only time he fires the gun, he fires it at a distance in a
01:39:28PM 18 rural area, and test fires it. He is nowhere near an
01:39:31PM 19 urban area, a populated area where people would be placed
01:39:33PM 20 at risk.

01:39:34PM 21 His mental state, I submit to the court, was at least
01:39:38PM 22 at that time stable enough he didn't turn the gun on any
01:39:41PM 23 of the people who were surrounding him.

01:39:43PM 24 One of the exhibits the government asked the court to
01:39:46PM 25 carefully scrutinize are the affidavits that were

01:39:50PM 1 submitted, and their exhibits. One of the affidavits,
01:39:55PM 2 what kind of caught my eye, was Mr. Franey apparently
01:39:59PM 3 said, "All non-Muslim Americans should be killed." That
01:40:04PM 4 suggests to us that this person intends to kill people who
01:40:07PM 5 are non-Muslim here.

01:40:10PM 6 But here he is, he has an opportunity, he is given a
01:40:12PM 7 machine gun surrounded by non-Muslims in a rural area, but
01:40:16PM 8 he doesn't turn the gun on these individuals. In fact, in
01:40:19PM 9 agreeing to go on these trips, in the affidavit he
01:40:21PM 10 specifically said, "As long as you're not killing people
01:40:26PM 11 or things like that." And he made that intention readily
01:40:31PM 12 apparent to them from the start.

01:40:32PM 13 Finally, most important, the fact -- the issue of
01:40:38PM 14 these guns is that when he was finally offered the
01:40:40PM 15 opportunity, the money, to purchase the gun, he didn't do
01:40:43PM 16 so. That shows and demonstrates that he has insight to
01:40:49PM 17 regulate his temperament, to regulate his behavior, his
01:40:53PM 18 actions.

01:40:56PM 19 The reason I say that is that it is very important,
01:41:01PM 20 with regards to this offense, that the punishment fit the
01:41:04PM 21 crime. I know that is a cliche term. But really what the
01:41:08PM 22 crime here was, but for the fortuitous event that this
01:41:14PM 23 restraining order from Illinois existed, Mr. Franey could
01:41:18PM 24 have possessed firearms.

01:41:20PM 25 The purpose of that restraining order, which we have

01:41:22PM 1 submitted in our memorandum, had to do with a complex
01:41:26PM 2 relationship with his ex. In all respects to that
01:41:30PM 3 prohibition order, that restraining order, Mr. Franey
01:41:34PM 4 adhered to the law. The only aspect of that restraining
01:41:37PM 5 order that he did not adhere to the law was the possession
01:41:39PM 6 of firearms.

01:41:40PM 7 And the possession occurred thousands of miles away
01:41:44PM 8 from where the order was issued. He never -- once that
01:41:49PM 9 order was implemented, he did not contact, harass, or
01:41:52PM 10 molest his ex. What that also provides us is this
01:41:57PM 11 individual is capable of following the law. In some
01:42:01PM 12 respects, he is.

01:42:04PM 13 I do want to say that -- I want to talk about
01:42:11PM 14 Mr. Franey's ideology. It is sensitive.

01:42:20PM 15 THE COURT: It is related conduct.

01:42:22PM 16 MR. HAMOUDI: Yeah, the related conduct. I was
01:42:26PM 17 up last night, I am thinking about this. In some ways,
01:42:32PM 18 you know, his belief system, his religious beliefs, I
01:42:36PM 19 empathize with him, where he is coming from.

01:42:38PM 20 I tried to look for answers in the law, because what
01:42:44PM 21 kind of equalizes our ground here in this country is the
01:42:47PM 22 law. The law really sets us apart from everything else.

01:42:51PM 23 I went back into my old law school notes, and I went
01:42:56PM 24 to my constitutional law textbooks, and I found this case,
01:43:00PM 25 this case called Baumgartner versus the United States. It

01:43:03PM 1 was in the '30s, '40s, where there was a lot of
01:43:07PM 2 anti-Semitism in Nazi Germany. There was an individual,
01:43:11PM 3 Mr. Baumgartner, who was running around basically saying
01:43:14PM 4 he supported what Hitler was doing, what Germany was
01:43:17PM 5 doing.

01:43:17PM 6 They were going to strip him of his citizenship. He
01:43:21PM 7 went up before the Supreme Court. The Supreme Court said
01:43:25PM 8 something interesting about speech. It said one of the
01:43:28PM 9 prerogatives of American citizenship is the freedom to
01:43:32PM 10 speak foolishly and without moderation.

01:43:34PM 11 It kind of struck a chord with me. Mr. Franey, in my
01:43:38PM 12 experience in listening to countless hours of recordings
01:43:41PM 13 of him talking to the undercover agent and reading his
01:43:44PM 14 letters, is that, he essentially speaks without
01:43:47PM 15 moderation. And he speaks very foolishly.

01:43:50PM 16 When he does that, he places people in fear. Not
01:43:56PM 17 people specifically, but in these political times he
01:44:01PM 18 places people in concern that, you know, he is holding
01:44:04PM 19 certain beliefs. That concerns people. And it brings
01:44:07PM 20 attention to him.

01:44:07PM 21 He is not the guy you would take to your Friday night
01:44:13PM 22 dinner, because he would talk about religion and politics
01:44:16PM 23 at dinner, and he would talk about it inappropriately.

01:44:21PM 24 The reality is, at the same time, if we were to
01:44:24PM 25 cherry-pick and focus on particular things he says, and

01:44:30PM 1 ignore every other thing he says and doesn't do, I think
01:44:34PM 2 we lose sight of who he really is.

01:44:37PM 3 In a lot of these streams of consciousness, is what I
01:44:42PM 4 call it, he talks about farming. He talks about the love
01:44:45PM 5 of his family. He talks about physical exercise. He
01:44:47PM 6 talks about President Trump. He talks about Hillary
01:44:51PM 7 Clinton. He talks about specific verses in the Koran. He
01:44:54PM 8 talks about the weather. So he is all over the place.

01:44:57PM 9 The conclusion I reach, he is an individual with an
01:45:01PM 10 idiosyncratic belief system that was in a community that
01:45:04PM 11 didn't adhere to that belief system, who has suffered from
01:45:11PM 12 mental health issues, and was essentially going out and
01:45:13PM 13 not taking his medicine, and proselytizing people in the
01:45:18PM 14 community.

01:45:18PM 15 Now, when he was doing this, he never threatened
01:45:22PM 16 anybody with violence. He never harmed anybody who didn't
01:45:27PM 17 adopt his belief system. He would just go out and try to
01:45:30PM 18 convert people into becoming Muslims. And he would go on
01:45:34PM 19 and on about the geopolitical views that he holds, which
01:45:38PM 20 includes views of ISIS, which includes views of what some
01:45:43PM 21 people call radical Islam. And when he did that, people
01:45:48PM 22 were legitimately concerned.

01:45:50PM 23 But the fact of the matter is, we live in a society
01:45:54PM 24 where we should allow people to vent their, what we call,
01:45:59PM 25 foolish and unmoderated speech, because it is in that

01:46:03PM 1 marketplace of ideas where the debate takes place, where
01:46:07PM 2 people are shown that their positions are not logically
01:46:12PM 3 sound, or don't make sense. It is important that we
01:46:16PM 4 preserve that. I believe that.

01:46:19PM 5 THE COURT: What category does the freedom of
01:46:22PM 6 speech include going into a resort, describing how you can
01:46:34PM 7 kill ten or twelve retired or current officers? You can
01:46:46PM 8 attack a Marine detachment that was shipping out? You can
01:46:52PM 9 behead judges, DAs?

01:47:01PM 10 It has been a lot of years since I left law school,
01:47:06PM 11 but my constitutional law doesn't endorse or permit that
01:47:16PM 12 kind of stuff with his history of domestic violence, his
01:47:25PM 13 desertion from his duty station. There is more than
01:47:39PM 14 rambling.

01:47:40PM 15 MR. HAMOUDI: Of course. I can answer that, your
01:47:42PM 16 Honor.

01:47:43PM 17 I think the distinction there is that when he says
01:47:47PM 18 these things, the question is, is he serious about it?
01:47:52PM 19 And we are asked to look -- Specifically on these issues
01:47:54PM 20 that you speak about, the military, where they vacation,
01:47:59PM 21 Joint Base Lewis-McChord, and the statements made, the
01:48:04PM 22 question is, at what point do we start to punish people
01:48:09PM 23 for saying those things?

01:48:10PM 24 The law provides us a construct. It is called true
01:48:14PM 25 threats, specific threats. And we would be here under

01:48:16PM 1 different circumstances if that had taken place. The fact
01:48:19PM 2 is, he holds extremely unpopular beliefs. If he were to
01:48:23PM 3 say, I would like to kill jihadists, I would like to kill
01:48:31PM 4 Al Qaeda -- If you remove the popularity, the group that
01:48:33PM 5 we endorse, and replace the group with somebody we don't
01:48:36PM 6 endorse, that's the problem. That's where it becomes we
01:48:41PM 7 are choosing one side from the other.

01:48:43PM 8 And I would like to address, with respect to the
01:48:46PM 9 domestic violence issues -- It was an issue that was
01:48:50PM 10 addressed in the court. When I say that, because it is
01:48:55PM 11 brought up now, I would like the court to imagine
01:48:58PM 12 contemporaneously when that judge in Alaska, and that
01:49:02PM 13 prosecutor in Alaska, had the evidence before them, and
01:49:06PM 14 they assessed him, and they assessed the situation, and
01:49:09PM 15 assessed the victim, they said we believe the punishment
01:49:13PM 16 that fits this crime is 60 days.

01:49:16PM 17 In regards to that, if this conduct -- this current
01:49:21PM 18 conduct had occurred in March of this year -- March or
01:49:24PM 19 later of this year, that offense would not have even
01:49:27PM 20 counted for guideline purposes, because it is near nine
01:49:30PM 21 years old.

01:49:32PM 22 What that tells me is that Mr. Franey demonstrates
01:49:36PM 23 his respect for when he is told you can't behave this way,
01:49:41PM 24 you can't go around and do this thing. He listened to the
01:49:44PM 25 court. And he had one other interaction with his ex.

01:49:48PM 1 Again, I emphasize, if the court read Ms. Hamilton's
01:49:52PM 2 letter, that it is a complex relationship. But I don't
01:49:55PM 3 see, based on what I observed with his wife and his
01:49:59PM 4 children, that he is a person who is a habitual domestic
01:50:05PM 5 abuser. That has not been demonstrated to me.

01:50:07PM 6 THE COURT: I think he is a person who suffers
01:50:12PM 7 from bipolar. He has anger management issues, that he
01:50:34PM 8 gets energized when on topic. The domestic violence was
01:50:46PM 9 the first, perhaps, event -- or it was second to the
01:50:55PM 10 desertion. I don't think the judge knew about the
01:51:03PM 11 desertion.

01:51:08PM 12 But at some point a reasonable person has to
01:51:21PM 13 attribute some validity to a series of events. I mean, it
01:51:30PM 14 is not a one-off with the domestic violence. We have seen
01:51:34PM 15 those kinds of things happening in our courts. We treat
01:51:43PM 16 it appropriately where it is a first-time offense. It is
01:51:59PM 17 some appropriate punishment perhaps, some warning, some
01:52:03PM 18 psychological treatment, and go forth and sin no more.
01:52:14PM 19 And that is all it takes.

01:52:19PM 20 But the persistence of the speech, the recurring
01:52:23PM 21 nature of the threats, what's the difference between he
01:52:32PM 22 and Mateen, he and Hasan at Fort Hood?

01:52:41PM 23 He has some commendable attributes.

01:53:01PM 24 I have never seen anything like this, 18 months
01:53:05PM 25 versus ten years. You're in the whirlpool. That's where

01:53:15PM 1 I am, between the Italian peninsula and that little strait
01:53:24PM 2 that most ships run aground.

01:53:27PM 3 MR. HAMOUDI: I agree, your Honor, we are worlds
01:53:30PM 4 apart, the government and us. I think about that movie
01:53:33PM 5 Minority Report, the precogs, trying to predict what is
01:53:37PM 6 going to happen in the future.

01:53:38PM 7 THE COURT: It is very difficult.

01:53:41PM 8 MR. HAMOUDI: It is very difficult. In the
01:53:44PM 9 concept of deterrence, Congress, the guidelines, and the
01:53:47PM 10 Commission have talked about this, and we look at the
01:53:52PM 11 past. And what we have done is --

01:53:54PM 12 We are not standing here alone. Probation,
01:53:58PM 13 Ms. Neumeister, Mr. Thomas, they staffed this. We are not
01:54:03PM 14 just letting him loose into the community, as they say.
01:54:07PM 15 We have a certain set of rules that we are asking him to
01:54:11PM 16 adhere to. And this court is going to be scrutinizing
01:54:15PM 17 him. It is important that the court is aware that, unlike
01:54:21PM 18 state probation, federal probation is -- he is going to be
01:54:26PM 19 monitored, and he is going to have to show that he follows
01:54:30PM 20 the rules, meets with his probation officer. And if he
01:54:32PM 21 disrespects them, if he goes off and does those things, he
01:54:36PM 22 knows he will be right here before this judge.

01:54:39PM 23 I think what counters a lot of this fear is that --
01:54:43PM 24 I am trying to drain fear out of this, because the law
01:54:46PM 25 doesn't operate from fear. The law operates from a place

01:54:49PM 1 of objectivity. And what I want to talk about is --

01:54:53PM 2 THE COURT: We have a responsibility to the
01:54:55PM 3 community, though, too. And Ms. Sullivan knows this. At
01:55:02PM 4 10:30 I sentenced a child abuser. The two things in our
01:55:13PM 5 society right now that are the most fearful to our
01:55:20PM 6 society, fear of danger to our kids and mass shootings.

01:55:35PM 7 I have lost a lot of sleep over -- and I'm sure you
01:55:41PM 8 have taken your responsibility very seriously.

01:55:44PM 9 MR. HAMOUDI: I have, your Honor.

01:55:45PM 10 THE COURT: And I know Mr. Greenberg has, too.
01:55:48PM 11 We are wrestling with this. I don't want to punish
01:56:00PM 12 someone that is not a threat.

01:56:09PM 13 MR. HAMOUDI: To try to allay those concerns as
01:56:12PM 14 best I can, I don't see before the court any empirical
01:56:18PM 15 evidence, any profiling evidence that demonstrates to me
01:56:25PM 16 that he does definitively present this danger.

01:56:30PM 17 What I am hearing the court talk about is what's
01:56:33PM 18 happening in certain instances in the community, like the
01:56:37PM 19 shooting in Texas at Fort Hood, you are talking about the
01:56:40PM 20 shooting --

01:56:40PM 21 THE COURT: San Bernardino, Orlando,
01:56:44PM 22 Fort Lauderdale.

01:56:46PM 23 MR. HAMOUDI: In that regard, I can add there
01:56:49PM 24 have been shootings by an individual Jared Loughner, the
01:56:55PM 25 Aurora shooting, there are 600 homicides in the city of

01:56:59PM 1 Chicago. We don't do -- I have never found myself
01:57:05PM 2 saying, oh, because there is -- if all these gang members
01:57:08PM 3 in Chicago are shooting and killing each other, and you're
01:57:11PM 4 a gang member with a gun, then in order to protect the
01:57:15PM 5 community from a future homicide, and because the
01:57:20PM 6 statistical reality in front of me is that all of these
01:57:23PM 7 homicides are occurring, I am going to punish you because
01:57:26PM 8 of your gang association, I cannot find that answer in the
01:57:31PM 9 law.

01:57:32PM 10 I can see where the court is coming from, from more
01:57:37PM 11 of a -- You are seeing it. You are in it. We are in a
01:57:44PM 12 difficult time. We are in a difficult time period. And
01:57:47PM 13 we struggle with it. But I can only submit to the court
01:57:52PM 14 that I look to the law for the answer. That's what I do.

01:57:54PM 15 I do want to talk about his person. I do want to say
01:57:59PM 16 he is a first-time felon, your Honor, and he is in his
01:58:03PM 17 mid-30s. That says a lot about a person. And he is
01:58:07PM 18 older. He is not a younger person. He is in his mid-30s.
01:58:10PM 19 He is a father -- he is a devoted father, and a devoted
01:58:14PM 20 husband to his wife. And the pictures we gave you is to
01:58:17PM 21 see this other side of him.

01:58:19PM 22 I do want to add that he has strong community ties.
01:58:29PM 23 He gets work. People trust him with responsibilities. He
01:58:34PM 24 has a farm. He sells what he grows on his farm to people
01:58:38PM 25 in the community. He has a support system. And I didn't

01:58:42PM 1 get to introduce them, but I wanted to make sure that the
01:58:44PM 2 court knows who is here. His wife Janelle, his father
01:58:48PM 3 Gerard, his sister Mckayla, his two children, and
01:58:54PM 4 Ms. Hamilton are here to tell this court that this
01:58:56PM 5 individual has people who support him and are there for
01:59:00PM 6 him.

01:59:01PM 7 What he needs is mental health treatment. What he
01:59:06PM 8 does need is to take his medication. What I have
01:59:10PM 9 experienced personally with him since the beginning when I
01:59:13PM 10 started to visit with him at the Federal Detention Center
01:59:17PM 11 until now is that -- We have heated debates. A lot of
01:59:21PM 12 times he uses curse words with me. Sometimes we just
01:59:24PM 13 don't see eye to eye. He always apologizes to me at the
01:59:28PM 14 end. He always understands where I am coming from.

01:59:32PM 15 But the biggest difference I have seen lately is that
01:59:35PM 16 he has been taking medication, mood stabilizers, which are
01:59:40PM 17 given to him for bipolar disorder. It has gotten better
01:59:44PM 18 since he started doing that.

01:59:48PM 19 If the court recalls, we had one motion in front of
01:59:51PM 20 the court to continue the case, and then we had the change
01:59:53PM 21 of plea hearing. As a rule and practice, I don't like to
01:59:57PM 22 let my client speak to a judge --

02:00:00PM 23 THE COURT: I remember.

02:00:01PM 24 MR. HAMOUDI: -- more than I have to. I made an
02:00:05PM 25 exception to that rule, because I really wanted the court

02:00:08PM 1 to get to know him as soon as possible. And I wanted the
02:00:10PM 2 court -- and I said this to Judge Robart the other day --
02:00:13PM 3 to size him up, and to have a personal interaction with
02:00:17PM 4 him as much as possible, to see where I was coming from.

02:00:20PM 5 And I really do believe in our sentencing memorandum
02:00:24PM 6 we justified the sentence we asked for in closing, and we
02:00:27PM 7 address all the 3553 factors.

02:00:30PM 8 In analyzing the government's memorandum, I really
02:00:34PM 9 see them addressing three of the factors. They address
02:00:37PM 10 the nature and circumstance of the offense, the personal
02:00:40PM 11 history, and to protect the public from future crimes
02:00:43PM 12 based on future dangerousness. Future dangerousness is
02:00:47PM 13 not part of the statute. The statute doesn't say that.

02:00:50PM 14 Protecting the public from future crimes talks really
02:00:54PM 15 about their pattern of criminal history and things of that
02:00:58PM 16 nature.

02:01:00PM 17 Unless the court has any other questions, your Honor,
02:01:02PM 18 I would like to pass the microphone to Mr. Greenberg.

02:01:07PM 19 THE COURT: You can resume the podium after
02:01:14PM 20 Mr. Greenberg at some point if you think of something
02:01:18PM 21 else.

02:01:19PM 22 MR. HAMOUDI: Thank you very much.

02:01:21PM 23 THE COURT: Mr. Greenberg.

02:01:25PM 24 MR. GREENBERG: Thank you, your Honor. Let me
02:01:27PM 25 pick up where Mr. Hamoudi left off, which is the need to

02:01:33PM 1 protect the public from future crimes of this defendant.
02:01:37PM 2
02:01:41PM 3
02:01:44PM 4
02:01:48PM 5
02:01:52PM 6
02:01:57PM 7
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02:03:01PM 25

The defense says they look to the law to figure out where the sentencing recommendation is coming from the government, that future dangerousness isn't part of this sentencing calculus. That is just simply wrong. It is right here in 3553(a)(2)(C), it is future dangerousness. It doesn't say the words "future dangerousness." It says, "The need to protect the public from future crimes of the defendant."

Judges are called upon every day to make this sort of assessment. It is not easy. I don't mean to suggest it is.

The only thing different about this case, in this regard, is that, from the government's point of view, this particular sentencing factor is the primary one to focus on in this case. It often is. It is often the nature and circumstances of an offense, characteristics of the defendant. Every case is different. They all have their sort of primary factor. We are focusing on this one. That is a proper sentencing factor for the court to focus on. So let me start with it.

It comes down to not-an-easy-to-answer question, but a relatively straightforward one. And that is, how does this court assess Mr. Franey? Does the court assess him as he now portrays himself, all talk, no action, harmless

02:03:06PM 1 individual who would never harm anyone, didn't mean the
02:03:11PM 2 things that he said? Or does the court credit the things
02:03:16PM 3 he said as being his true intentions that he would follow
02:03:20PM 4 through on? That's really what it comes down to.

02:03:23PM 5 Those intentions that he said over and over again are
02:03:27PM 6 his desire to kill police officers, to kill military
02:03:31PM 7 officers -- primarily those two categories, but judges,
02:03:36PM 8 other things as well.

02:03:37PM 9 THE COURT: They are bottom feeders.

02:03:41PM 10 MR. GREENBERG: Right. Exactly. Especially the
02:03:44PM 11 DAs and the prosecutors.

02:03:46PM 12 We answered the question, obviously, in the latter
02:03:49PM 13 category, that these were his true intentions. And there
02:03:52PM 14 are many good reasons for this court to find that to be
02:03:55PM 15 true.

02:03:58PM 16 First of all, how frequently he talked about these
02:04:02PM 17 things. This is not someone who in the heat of the
02:04:07PM 18 moment, on a couple of bad days, said something he didn't
02:04:10PM 19 mean, or that he later regretted and wanted to take back.
02:04:13PM 20 He talked about this every day of his life to his
02:04:20PM 21 like-minded radical associates, to his nonlike-minded
02:04:24PM 22 neighbors and associates in the community, to police
02:04:28PM 23 officers. This was his singular focus and obsession,
02:04:33PM 24 talking about killing police, killing military in the name
02:04:38PM 25 of his favorite terrorist group.

02:04:40PM 1 When someone talks about something every day,
02:04:44PM 2 basically obsessed with the topic, there is much more
02:04:48PM 3 credibility to those words and how they mean them.
02:04:53PM 4 Secondly, we see from his own words, his more recent
02:04:59PM 5 words sent from prison, that he still has the same
02:05:04PM 6 mindset. Even as sentencing approaches, when he would be
02:05:09PM 7 most likely to at least pretend to be remorseful, to
02:05:14PM 8 disavow the violence that he called for, he doesn't. He
02:05:19PM 9 writes letters wishing the FBI agents die, going on
02:05:25PM 10 expletive tirades about them, mocking these court
02:05:29PM 11 proceedings as being, quote, kind of stupid and
02:05:32PM 12 ridiculous. He has shown that he is not going to change
02:05:36PM 13 this mindset.
02:05:38PM 14 And let me say one thing. The government's
02:05:41PM 15 recommendation is not as we are accused of in the papers
02:05:46PM 16 here. It has nothing to do with Mr. Franey's politics or
02:05:50PM 17 religious -- political/religious beliefs. Nothing at all.
02:05:54PM 18 It has everything to do with his stated intent to kill
02:05:57PM 19 people.
02:06:00PM 20 I don't care if he wants to kill police and military
02:06:03PM 21 because he likes ISIS, or Al-Qaeda, or Adolf Hitler, or
02:06:09PM 22 white supremacist groups, or in the name of Mickey Mouse
02:06:13PM 23 or Donald Duck. It has nothing to do with his cause or
02:06:17PM 24 beliefs. It has everything to do with his stated intent
02:06:20PM 25 to kill.

02:06:23PM 1 This was, though, your Honor, more than just talk.

02:06:31PM 2 This defendant took actions that show this court what his

02:06:35PM 3 true intentions were.

02:06:38PM 4 Let's talk about a number of things that he did.

02:06:41PM 5 First of all, he tried to buy guns from the undercover

02:06:44PM 6 agent. Not just a Glock, he wanted machine guns,

02:06:52PM 7 Streetsweeper shotguns, AK-47s, M-16s. You read the

02:06:58PM 8 papers. That's all he talked about, wanting to get his

02:07:01PM 9 hands on those kinds of weapons. He invested days and

02:07:05PM 10 days of his life in this.

02:07:07PM 11 Let's be clear, the reason he went on these trips,

02:07:10PM 12 and he said this time and time again, is because he wanted

02:07:14PM 13 to get guns for himself. He told the undercover he wasn't

02:07:18PM 14 able to. He tried. You have seen, he tried to buy an

02:07:20PM 15 AK-47 from Witness No. 1, one of his neighbors. He tried

02:07:24PM 16 to get guns from Witness No. 4. He went to gun stores.

02:07:28PM 17 He talked with his friends in his text messages about

02:07:31PM 18 trying to get guns. He was trying to get guns. And he

02:07:34PM 19 admitted that to the undercover.

02:07:36PM 20 He couldn't get them. He said, "I can't go to a gun

02:07:39PM 21 shop and just get them," because he knew he was a

02:07:42PM 22 prohibited person. That's why he did this, to get guns.

02:07:46PM 23 Now, he almost took it. He reached a deal to buy a

02:07:49PM 24 Streetsweeper and an AK-47, and he was stopped by the

02:07:54PM 25 police minutes after reaching that deal, just in a random

02:07:58PM 1 occurrence. And he became very suspicious at that point,
02:08:01PM 2 and he cancelled the deal. That doesn't mean he wasn't
02:08:04PM 3 trying to get guns.

02:08:06PM 4 You saw that he conducted internet searches right
02:08:09PM 5 after talking about this firearms deal. "How much does a
02:08:14PM 6 thousand rounds of assault rifle ammunition cost?" That
02:08:17PM 7 is right there. He did that. He went to two gun stores.

02:08:26PM 8 He has aggressive confrontations in the community
02:08:30PM 9 time and time again. The statement was made, "Well, he
02:08:33PM 10 doesn't threaten anyone because of his beliefs." That's
02:08:36PM 11 not true. Witness No. 1 had to pull out a shotgun and
02:08:39PM 12 tell him to get off his property. People called the
02:08:44PM 13 police time and time again because of the aggressive and
02:08:47PM 14 confrontational manner in which Mr. Franey conducted
02:08:50PM 15 himself.

02:08:50PM 16 He also, as this court has alluded to, went so far as
02:08:55PM 17 to identify a specific local military facility that he
02:09:00PM 18 proposed attacking.

02:09:02PM 19 Now, I don't want to overstate and go too far. He
02:09:05PM 20 wasn't on the eve of conducting an attack, that we know
02:09:09PM 21 of. But think about what he did do. He identified this
02:09:13PM 22 place. He talked about the layout of this place.

02:09:17PM 23 THE COURT: The time of year that the party is
02:09:22PM 24 occurring.

02:09:24PM 25 MR. GREENBERG: Exactly. So it is more than just

02:09:26PM 1 talk, it is thought, it is planning, it is looking ahead
02:09:29PM 2 to these sorts of things.

02:09:31PM 3 And the suspicious trip he takes to the nuclear power
02:09:34PM 4 plant. All of these things, your Honor, these are actions
02:09:37PM 5 that the defendant took, not just talk.

02:09:41PM 6 It would defy common sense for this defendant to act
02:09:48PM 7 in all of these sorts of ways if he wasn't, in his mind,
02:09:54PM 8 in his heart, serious about the things he said he was
02:09:58PM 9 going to do.

02:10:00PM 10 And we quoted in the sentencing memorandum, and I
02:10:03PM 11 can't say it better than he said about himself, "It would
02:10:07PM 12 be absurd to think I wasn't going to do something
02:10:10PM 13 eventually." And I would suggest that it is absurd to
02:10:15PM 14 think that.

02:10:18PM 15 This defendant has given the court every reason to
02:10:21PM 16 credit the things he says he is going to do, and
02:10:28PM 17 absolutely no reason to discredit them. It is just so
02:10:31PM 18 easy to stand up here and say, "Well, I didn't mean it. I
02:10:34PM 19 was just talking. I would never harm anyone." That is
02:10:37PM 20 too easy. He lived his life for the last two years
02:10:41PM 21 showing this court what he thought, what he was intending
02:10:48PM 22 to do.

02:10:49PM 23 All of these things make him a future danger, and
02:10:53PM 24 under the sentencing factor it is appropriate to consider
02:10:57PM 25 that.

02:10:58PM 1 The nature and circumstances of the offense, I don't
02:11:02PM 2 need to really regurgitate that again. I went into that
02:11:06PM 3 in detail in the memo, and I guess I touched on that a bit
02:11:10PM 4 already.

02:11:11PM 5 But the thing that concerns the government about the
02:11:13PM 6 offense -- it is a serious offense, but it is more the
02:11:20PM 7 motivations for engaging in the offense, the desire to get
02:11:25PM 8 weapons, the stated desire to get them to kill police and
02:11:29PM 9 military. That's what he said at the time, why he was
02:11:33PM 10 doing the offense conduct.

02:11:40PM 11 The defendant's history and characteristics give the
02:11:43PM 12 government no comfort in terms of assessing what his
02:11:46PM 13 conduct would look like in the future, because when you
02:11:52PM 14 consider his future dangerousness, consider the
02:11:55PM 15 seriousness of the offense in the context of the volatile
02:12:02PM 16 combination of traits, of characteristics that this
02:12:07PM 17 defendant presents, it is extremely concerning. His
02:12:12PM 18 obsession with violence and violent ideologies, it is a
02:12:18PM 19 singular focus.

02:12:19PM 20 His, quote, serious mental health issues, according
02:12:23PM 21 to the presentence report. He has been involuntarily
02:12:27PM 22 committed.

02:12:33PM 23 He hates the military because of his own personal
02:12:36PM 24 experiences. He deserted the military. For some reason
02:12:40PM 25 he consistently blames the military for, quote, taking

02:12:43PM 1 away his kids. He harbors great hatred to the military.

02:12:49PM 2 He has training in the use of firearms from his time
02:12:52PM 3 in the Army. He displayed that, going out and picking up
02:12:55PM 4 a machine gun and test firing it just fine. Very
02:12:59PM 5 concerning.

02:13:01PM 6 And the court has said more than I can, and said it
02:13:03PM 7 better, about the domestic violence crimes. It does show
02:13:07PM 8 anger management issues. It shows the propensity and the
02:13:10PM 9 potential for violence.

02:13:13PM 10 It is a witch's brew of characteristics and of
02:13:21PM 11 history, that when you look at them in the context of the
02:13:23PM 12 offense, and the statements, and the actions in
02:13:26PM 13 furtherance of them, the government feels very strongly
02:13:32PM 14 that the sentence that we are recommending, a ten-year
02:13:36PM 15 sentence, is the appropriate one in this case.

02:13:38PM 16 THE COURT: Thank you very much, Mr. Greenberg.

02:13:44PM 17 Ms. Neumeister, anything you want to add? Maybe
02:13:50PM 18 describe the rationale from Probation and Pretrial.

02:13:55PM 19 PROBATION OFFICER NEUMEISTER: Your Honor, not
02:13:56PM 20 trying to oversimplify the situation, because there is
02:14:01PM 21 nothing simplistic about Mr. Franey or this case, but in
02:14:05PM 22 discussing his background, the nature of this case, really
02:14:12PM 23 what we came up with in our office is that he has serious
02:14:16PM 24 mental health issues that have been untreated for years.

02:14:21PM 25 This was, honestly, one of the most difficult

02:14:23PM 1 interviews I have ever conducted, because it was so
02:14:27PM 2 immediately apparent that he was manic and very hard to
02:14:35PM 3 rein in and keep focused. To me, the mental health issue
02:14:40PM 4 overrode so much when looking at this case.

02:14:48PM 5 THE COURT: All right. Mr. Hamoudi, do you want
02:14:53PM 6 to say anything before I ask to speak with Mr. Franey?

02:14:56PM 7 MR. HAMOUDI: I did have a couple of points to
02:14:58PM 8 make. If the court will allow, and I know the court has
02:15:01PM 9 Ms. Hamilton's letter before it, she did want to say a few
02:15:04PM 10 words on his behalf. Would the court allow that?

02:15:07PM 11 THE COURT: That's fine.

02:15:09PM 12 MR. HAMOUDI: I will make a couple of points.
02:15:10PM 13 Some of the -- I have great respect for Mr. Greenberg.
02:15:14PM 14 We work together. We get along real well. The struggle I
02:15:24PM 15 have with some of the things that he says is that I
02:15:32PM 16 think -- like the witness statements, these individuals
02:15:34PM 17 were never confronted. We dispute the interpretations.
02:15:39PM 18 We take issue with Witness 1's allegation that he tried to
02:15:45PM 19 purchase a gun from him, in fact. We were going to
02:15:49PM 20 challenge that. We are not here because of that. We have
02:15:51PM 21 the offense conduct in the presentencing report. I think
02:15:56PM 22 it speaks for itself.

02:15:57PM 23 I want to talk about -- one important issue, about he
02:16:01PM 24 deserted in 2004. That means he has held these beliefs
02:16:05PM 25 for now near twelve years. He has not acted on these

02:16:17PM 1 beliefs. He has held them. It is not a secret to anyone.
02:16:21PM 2 Everybody knows. His family knows. His sisters know.
02:16:24PM 3 Everybody knows. So it is not this is a new thing that
02:16:28PM 4 the government has been onto. They have been onto him for
02:16:33PM 5 some time. He feels that -- in a way he does feel that he
02:16:36PM 6 is being profiled.

02:16:40PM 7 I understand why he is being profiled. I think it is
02:16:45PM 8 legitimate, what they are doing when they profile. But
02:16:47PM 9 from his perspective, because he has untreated mental
02:16:53PM 10 health issues for twelve years, he is viewing it as, "They
02:16:57PM 11 are after me because of my religious beliefs and my
02:16:59PM 12 political beliefs." I think that's where law enforcement
02:17:05PM 13 and he don't meet eye to eye. I think that gap can be
02:17:11PM 14 bridged. I do think that gap can be bridged. How he
02:17:15PM 15 presents to the court when he is in court, he does respect
02:17:20PM 16 that. I want to emphasize that.

02:17:22PM 17 If the court would allow, I would like to have
02:17:25PM 18 Ms. Hamilton speak very briefly.

02:17:26PM 19 THE COURT: Ms. Hamilton, come forward to the
02:17:33PM 20 lectern.

02:17:47PM 21 MS. HAMILTON: Good afternoon, your Honor.

02:17:50PM 22 THE COURT: Good afternoon.

02:17:52PM 23 MS. HAMILTON: My name is Laura Hamilton. And my
02:17:55PM 24 relationship to Daniel has been through -- I am a midwife,
02:17:59PM 25 and I have taken care of his wives and the babies and

02:18:04PM 1 delivered the babies.

02:18:07PM 2 So one of the things that I wanted to say about
02:18:12PM 3 Daniel is that he speaks very loudly, and he has an
02:18:17PM 4 opinion. I respect that because I respect people who live
02:18:21PM 5 by their own convictions. It is one thing if people say
02:18:24PM 6 it, with his Muslim belief, but he also lives his Muslim
02:18:35PM 7 belief very strongly. He talks all the time about going
02:18:41PM 8 to the mosque. He constantly wanted one of us to go. He
02:18:45PM 9 felt it was a good experience. He was very sincere about
02:18:48PM 10 that.

02:18:50PM 11 Through all of the talk about the negative things
02:18:53PM 12 that he didn't like about certain people and government,
02:18:57PM 13 beside all of that he would also talk about God and
02:19:01PM 14 spiritual.

02:19:02PM 15 I had the opportunity to go to his home. When I was
02:19:06PM 16 there they had the -- is it Torran -- Koran, it was on TV,
02:19:16PM 17 and it was constantly going. At his bedside there was
02:19:21PM 18 books where Janelle, his wife, could read. It was very
02:19:24PM 19 obvious that he believed that lifestyle and chose to live
02:19:28PM 20 that lifestyle. That's where I am coming from, as far as
02:19:31PM 21 respecting him for his convictions.

02:19:34PM 22 Actually, when he would come to my office, I would
02:19:37PM 23 look forward to it, because I loved the conversations with
02:19:39PM 24 him. I would mostly just listen, because I had never
02:19:45PM 25 heard a lot of that, you know, anything about the Muslim.

02:19:50PM 1 But he was very respectful, very kind when he went
02:19:55PM 2 through -- You learn a lot about people when they go into
02:19:58PM 3 labor. It is a time that you get to yell, cuss, and
02:20:01PM 4 scream, and nobody cares. You see sides of people that no
02:20:05PM 5 one else does. You see dads being emotional, you see dads
02:20:09PM 6 surrender, you see dads cry, you see dads totally put
02:20:14PM 7 themselves into their wife, and are overwhelmed with what
02:20:17PM 8 is going on.

02:20:18PM 9 Daniel never left her side. He was there the whole
02:20:21PM 10 time. In fact, he wanted to catch the baby, and have the
02:20:26PM 11 baby immediately.

02:20:29PM 12 One time in my office he was there, and I have a
02:20:33PM 13 patient who was a Lewis County sheriff, and there was
02:20:38PM 14 Daniel in there. And they didn't know who each other
02:20:41PM 15 were, but they started talking and visiting, and they were
02:20:44PM 16 talking about God, and they were talking about government.
02:20:49PM 17 Neither one of them knew the background of who they were,
02:20:52PM 18 but they sat in the waiting room and visited very
02:20:55PM 19 normally.

02:20:58PM 20 I think the one statement I could make about Daniel
02:21:01PM 21 is that he talks very loudly and he talks a lot. I am not
02:21:10PM 22 threatened at all about what he said, because he has never
02:21:13PM 23 followed through with any of it. It is his opinion. And
02:21:16PM 24 we have a right to our opinions. He never followed
02:21:20PM 25 through with them, and so I feel he is no threat at all.

02:21:25PM 1 I feel, being Muslim, his wife depends on him. She
02:21:30PM 2 doesn't work outside the home. And they have two small
02:21:33PM 3 children to care for. He has always worked, whether it
02:21:36PM 4 was fishing, or doing carpentry, or whatever he needed to
02:21:38PM 5 do. He always had a job to take care of his family.

02:21:44PM 6 His wife doesn't work outside the home. She doesn't
02:21:46PM 7 have skills to do that. Because of their Muslim belief,
02:21:51PM 8 she is home and he takes care of them.

02:21:53PM 9 He has paid off his house. He is in his mid-30s and
02:21:57PM 10 his house is paid for. Sure, it is a small little house,
02:22:00PM 11 it is not a mansion, but it is paid for. He did that for
02:22:03PM 12 his family. Because as a fisherman he knew that things
02:22:07PM 13 were limited, and sometimes he is really busy, and
02:22:09PM 14 sometimes he is not. So he was very responsible and paid
02:22:13PM 15 off his home, and saved money and was prepared for those
02:22:16PM 16 times.

02:22:19PM 17 So I have nothing but praise for the experience I've
02:22:23PM 18 had with him and his wife. And I have continued to have a
02:22:26PM 19 relationship with his wife and the children. I actually
02:22:30PM 20 appreciated learning that process of the Muslim and
02:22:34PM 21 hearing about it. I just hope he can go home with his
02:22:42PM 22 family.

02:22:42PM 23 THE COURT: Thank you, Ms. Hamilton. Mr. Franey,
02:22:47PM 24 anything you want to say to me before I pass judgment on
02:22:50PM 25 this? He can stand right there.

02:23:02PM 1 THE DEFENDANT: I have a letter here, I promised
02:23:05PM 2 I would read, these folks wrote for me. They are very
02:23:10PM 3 nice.

02:23:10PM 4 It says, "Thank you, sir. I just want you to know I
02:23:12PM 5 love my wife and my kids. They are everything to me.
02:23:16PM 6 Being away from them the past eleven months has been the
02:23:19PM 7 worst punishment I have ever endured. My family is
02:23:23PM 8 suffering too, especially my two young babies.

02:23:28PM 9 "I now understand the laws about possessing guns. I
02:23:32PM 10 now know I can never possess them, be around them,
02:23:35PM 11 nothing. I am sorry if I have caused anyone hurt or pain.
02:23:38PM 12 I am sorry to my family.

02:23:39PM 13 "I get excited and talk a lot, a lot. I want to talk
02:23:45PM 14 about Islam to anyone -- Islam to anyone and everyone who
02:23:49PM 15 will listen. I am not a dangerous person. I would never
02:23:52PM 16 intentionally hurt anyone.

02:23:53PM 17 "I am upset by the U.S. government. I am upset by
02:23:56PM 18 the atrocities that are happening all around the world. I
02:24:00PM 19 am upset at the FBI agents, this is true. I have said
02:24:03PM 20 very mean things about them, but it does not make me
02:24:06PM 21 dangerous.

02:24:07PM 22 "My goal is to serve my time and continue to show
02:24:09PM 23 everyone that I am not and will not be dangerous. I want
02:24:12PM 24 to be reunited with my family as soon as possible. Thank
02:24:15PM 25 you."

02:24:16PM 1 I'm not supposed to say anything else right now. And
02:24:22PM 2 I'm not trying to get more time than whatever you have in
02:24:25PM 3 your head. So if at any time you think it is going that
02:24:28PM 4 way, you can kind of signal me.

02:24:32PM 5 THE COURT: There is not an applause meter.

02:24:37PM 6 THE DEFENDANT: Like at auction, you know,
02:24:42PM 7 (indicating).

02:24:44PM 8 There is a couple of things I would like to address.
02:24:47PM 9 None of us have been completely honest about this
02:24:50PM 10 situation. I don't even know where to begin. Like with
02:24:54PM 11 the domestic violence thing, there was twice the cops got
02:24:58PM 12 involved. She said I was beating her.

02:25:01PM 13 In Alaska I was looking at all kinds of felony
02:25:03PM 14 assaults. And I was in there the same time as a native
02:25:07PM 15 guy was going for sentencing, and he had the exact same
02:25:11PM 16 charges, and they had hauled his wife away in an
02:25:14PM 17 ambulance, and she had to get reconstructive surgery.

02:25:17PM 18 At that time there wasn't a mark of any kind anywhere
02:25:20PM 19 on this woman's body. She is from Wisconsin, and I
02:25:24PM 20 haven't seen her bruise, you know, from anything. She is
02:25:27PM 21 very white, and things like that.

02:25:30PM 22 In 2011, when the cops came, we both told our
02:25:33PM 23 stories, what happened. They said, "We believe that none
02:25:35PM 24 of these things happened," this and that. They said,
02:25:39PM 25 "Because there are no marks, we can't arrest you," so on

02:25:44PM 1 and so forth.

02:25:44PM 2 In 2011, when that happened, I was starting to go
02:25:48PM 3 back to the mosque in the spring, when I got back from the
02:25:52PM 4 trip with my youngest brother and my oldest son. She
02:25:55PM 5 didn't like anything to do with it. I started praying
02:25:59PM 6 greatly. She didn't like that.

02:26:00PM 7 Ramadan came in August, and she told me if I don't
02:26:04PM 8 stop praying and if I don't stop fasting she is going to
02:26:08PM 9 put me back in a mental hospital or jail. I said, "Well,
02:26:11PM 10 this is what I do," things like that.

02:26:13PM 11 During that month she bloodied my lip, and she broke
02:26:16PM 12 the door where I pray, and she took the kids several
02:26:21PM 13 times. One particular time Ezra, our oldest son, was
02:26:25PM 14 asking me, "Don't let her take us. Don't let her take
02:26:27PM 15 us." I said, "Buddy, there is nothing I can do."

02:26:30PM 16 Since Alaska I haven't been able to be with my kids
02:26:33PM 17 legally. And she took them two times, a third time for
02:26:37PM 18 one night, and two times for two nights (sic). Like I
02:26:40PM 19 said, the kids were asking, "Please don't let her take
02:26:43PM 20 us."

02:26:44PM 21 I have been able to talk to them from 2012 to 2014.
02:26:48PM 22 I saw them for four days in May 2012, and five days in
02:26:53PM 23 June 2012. The last two years they have been asking about
02:27:00PM 24 things, like if I forgot about them. I assured them I
02:27:03PM 25 could never do that. They asked if I forgot where they

02:27:06PM 1 lived. Ezra started telling me his address. Gabby has
02:27:10PM 2 been asking me why I'm not coming around, when I am coming
02:27:13PM 3 around.

02:27:13PM 4 Eventually Ezra just asked, "We would like to come
02:27:17PM 5 live with you." At one time he said, "Can I please come
02:27:20PM 6 live with you?" In his way, I know how he talks and
02:27:23PM 7 stuff, he was begging me, like, "Why won't you come get
02:27:27PM 8 me? Why won't you let me come live with you?"

02:27:30PM 9 The protection order, she got it in 2001, after I
02:27:35PM 10 applied for a parenting plan in Washington. She went and
02:27:39PM 11 got a protection order because I said stuff about her dad
02:27:42PM 12 that she told me and about her and different things. It's
02:27:45PM 13 a whole 'nother thing. But there is a lot involved with
02:27:48PM 14 that.

02:27:48PM 15 But she went and got a protection order after I filed
02:27:50PM 16 that. The judge said, "If you want to try and see your
02:27:54PM 17 kids, you have to go to Wisconsin." I couldn't really do
02:27:56PM 18 that at that time.

02:27:57PM 19 And that's when eight months went by, and then she
02:28:00PM 20 called one day and said, "Why did you say that stuff about
02:28:03PM 21 my dad?" this and that. And then I talked to Ezra for
02:28:06PM 22 about nine hours the next two days. And eventually she
02:28:11PM 23 said, "Okay, you can come see him," things like that.

02:28:15PM 24 Anyway, on the way over there a New Mexican state
02:28:19PM 25 trooper pulled me over and said, "I am on the no-fly list,

02:28:24PM 1 I'm on the terrorist list," things like this. I said,
02:28:26PM 2 "Thank you for that information, but I was already aware
02:28:28PM 3 of that." Because once I started going to the mosque, the
02:28:32PM 4 brothers told me what the situation was. As I went there
02:28:35PM 5 for a few months, they would point out when agents or
02:28:37PM 6 informants would come and try to talk to me, "That is this
02:28:40PM 7 guy, that is this guy," so on and so forth. "Just be
02:28:44PM 8 careful around them."

02:28:46PM 9 As I got to know the Muslims -- the Muslims and what
02:28:50PM 10 they have been through, the firsthand stories about
02:28:56PM 11 American Muslims that have been arrested for four years
02:28:59PM 12 while the government collected evidence. They were
02:29:04PM 13 tortured during those four years, put in with thugs.

02:29:08PM 14 This particular brother's name is Hanza. He is from
02:29:11PM 15 Yemen. He is a rotund brother. He's a doctor, his wife
02:29:12PM 16 is a pharmacist. He spent four years while they collected
02:29:16PM 17 evidence on him, and beat him. And then they eventually
02:29:19PM 18 let him go, never filed charges. He would tell me, "Don't
02:29:21PM 19 worry about it. It is okay. No big deal."

02:29:24PM 20 The first Muslim I ever met at an auction in Oregon
02:29:28PM 21 in 2009, they also picked him up and tortured him for four
02:29:32PM 22 months.

02:29:34PM 23 So when we go to learn from Sheik Mohammad -- He is
02:29:39PM 24 a fairly good name in the mosque in Portland. He also has
02:29:43PM 25 been arrested, charged, and charged with bomb residue on

02:29:46PM 1 his pads, which is absurd. This man would never do
02:29:49PM 2 anything like that. He was held. He was let go. After
02:29:51PM 3 so long they said, "We made a mistake."
02:29:54PM 4 Anyway, this was like ten years ago, and he was on
02:29:57PM 5 the no-fly list. Just give me a second. Anyway, he
02:30:04PM 6 fought it in court, the no-fly list thing for years, and
02:30:07PM 7 he finally won. He was trying to go to Somalia to see his
02:30:10PM 8 mom. She is elderly. He is pushing 60. He won that, he
02:30:16PM 9 had no reason to be on the no-fly list. But he still
02:30:19PM 10 can't fly. He won the case, but he went to fight this. I
02:30:26PM 11 told the brother, "We won." The guy says, "Yeah." I
02:30:28PM 12 said, "Can he fly?" He said, "Well, no."
02:30:30PM 13 It is just standard how we are treated. When I went
02:30:33PM 14 to the mosque, I got put on the no-fly list. You know
02:30:36PM 15 what I mean? Before ISIS existed or anything like that.
02:30:41PM 16 Do I appreciate what they are doing over there?
02:30:44PM 17 Yeah. I think I understand it better than what most
02:30:46PM 18 people have in their heads.
02:30:50PM 19 The world knows about what is going on with Assad,
02:30:53PM 20 for the most part. There is an article here in the
02:30:56PM 21 New Yorker. It details a bunch of lawyers that got
02:30:59PM 22 together, that they left the International Criminal Court
02:31:04PM 23 to start their own organization, because the International
02:31:07PM 24 Criminal Court was a very slow process, and they had only
02:31:13PM 25 convicted three people, two Congo drug warlords and a guy

02:31:18PM 1 from Sudan.

02:31:19PM 2 The article talks about the volumes and volumes of
02:31:23PM 3 proof they have that Assad ordered the tortures. And it
02:31:27PM 4 was reported back to him that they are being carried out.
02:31:29PM 5 And it goes into detail, a lot about the legal aspect of
02:31:34PM 6 it, and this and that. And it actually has people talk
02:31:37PM 7 about what they have been through, what they have seen,
02:31:39PM 8 and things like that. Because he brought up different
02:31:43PM 9 things like, you know, this is my favorite terrorist group
02:31:48PM 10 or whatever. The world knows what this guy is doing.

02:31:57PM 11 It talks about things that you don't really want to
02:32:00PM 12 say that they are doing to kids, what they are doing to
02:32:03PM 13 women, civilians. We know that Russia bombed that aid
02:32:09PM 14 convoy that was trying to go help some starving people in
02:32:12PM 15 Aleppo.

02:32:12PM 16 But we don't do anything about that. We don't worry
02:32:15PM 17 anything about that. Do you understand what I'm saying?
02:32:17PM 18 But these guys, ISIS, or whatever you want to call them,
02:32:21PM 19 these aren't some lunatics who can't think for themselves.
02:32:24PM 20 There is a bunch of doctors from America, from Australia,
02:32:28PM 21 from Saudi, from all over the world. There is an
02:32:31PM 22 80-year-old man from China that walked there. There are
02:32:33PM 23 kids from Iceland, from Mexico, from all over the world
02:32:36PM 24 who have gone there to be doctors, to be nurses, to be
02:32:40PM 25 fighters, to be bakers, to help these people that are

02:32:43PM 1 being, you know, murdered, literally.

02:32:45PM 2 And this has been going on for a long time in North
02:32:47PM 3 Africa and the peninsula since World War I. There is no
02:32:50PM 4 doubt about that.

02:32:51PM 5 But when you start looking at what is really going
02:32:53PM 6 on, and who is committing the atrocities, like in Egypt,
02:32:57PM 7 and stuff like this, and the laws that have been going on
02:32:59PM 8 there since the '30s and '40s, and how they treated the
02:33:01PM 9 majority of the people -- Like in Egypt and Syria, only
02:33:05PM 10 certain classes are allowed into the military. Why they
02:33:08PM 11 took Morsi out of power -- why America took Morsi out of
02:33:12PM 12 power was because he opened the military up to anyone who
02:33:15PM 13 qualified. He didn't preclude anybody. Just whoever
02:33:17PM 14 qualified.

02:33:19PM 15 The same thing with Algeria, you know, twice, in the
02:33:25PM 16 1930s and 1991 elected an Islamist government. France
02:33:31PM 17 killed 2 million people back in the day. They killed
02:33:34PM 18 200,000 in '91. And this is what is going on there, you
02:33:38PM 19 know.

02:33:38PM 20 People that are fighting for ISIS are not suicidal,
02:33:43PM 21 they are not homicidal. We don't believe in torture. We
02:33:46PM 22 just don't think that a kid should be allowed to be
02:33:48PM 23 tortured -- to be burned with torches, to be blown up, to
02:33:53PM 24 have their eyes gouged, any of this. You understand what
02:33:56PM 25 I'm saying?

02:33:58PM 1 And, yeah, I got upset a lot addressing the mental
02:34:03PM 2 health stuff. Apparently I am bipolar, Bipolar I. I read
02:34:06PM 3 a book while I have been in lockup, and bipolar people
02:34:10PM 4 tend to -- Bipolar I tend to develop Tourette's Syndrome,
02:34:17PM 5 which I wondered about, because all my life I have never
02:34:19PM 6 cussed until shortly after high school. And it has become
02:34:24PM 7 more and more --

02:34:24PM 8 THE COURT: What motivated you to talk
02:34:27PM 9 graphically about cutting people's heads off and attacking
02:34:34PM 10 them during recreation and stuff like that?

02:34:39PM 11 THE DEFENDANT: That is a touchy subject. I am
02:34:41PM 12 not supposed to talk about it. But if you would like, I
02:34:44PM 13 would. I feel like the truth is as good as anything, to
02:34:47PM 14 be honest with you.

02:34:48PM 15 THE COURT: Sure.

02:34:49PM 16 THE DEFENDANT: In 2011, in the wintertime, after
02:34:52PM 17 the protection order, the FBI put a guy on me to try and
02:34:56PM 18 get me to bring him guns or be around guns with him. His
02:35:03PM 19 name -- his Muslim name is Aquse (phonetic). At one point
02:35:13PM 20 he mentioned, "I want a gun to go shoot Kafirs," you know,
02:35:17PM 21 disbelievers.

02:35:18PM 22 None of the other brothers talked like this, like
02:35:21PM 23 say, "I want to kill Americans." Obviously, just from the
02:35:24PM 24 documents, I was more specific. I don't believe in going
02:35:28PM 25 into a mall or airport or anything like that. No Muslim

02:35:32PM 1 **does.**

02:35:32PM 2 **That's why a lot of these shootings are suspect to**
02:35:35PM 3 **us, because we don't believe in killing civilians. Where**
02:35:39PM 4 **they just blew up Aleppo, the most ancient city in the**
02:35:44PM 5 **world. The people tried to come to checkpoints to leave,**
02:35:47PM 6 **they shot them. If they stayed, they starved or bombed**
02:35:50PM 7 **them to death. We don't believe in that.**

02:35:51PM 8 **Anyway, this guy wanted a gun to kill Kafirs. He**
02:35:54PM 9 **said he wished he could get his hands on a gun. I**
02:35:57PM 10 **understood him to be a felon. I said, "Brother, I thought**
02:35:59PM 11 **you were a felon." He already knew I was suspicious of**
02:36:00PM 12 **him, just because of how he carried himself. He never**
02:36:03PM 13 **wanted to go around the brothers I like.**

02:36:04PM 14 **THE COURT: Why did you play the part then?**

02:36:06PM 15 **THE DEFENDANT: No. When he said that, I said,**
02:36:08PM 16 **"Brother, I thought you were a felon." He says, "I am not**
02:36:11PM 17 **an agent." I said, "Okay. Cool." And we just parted**
02:36:15PM 18 **ways over the next couple of months. I just talked about**
02:36:17PM 19 **Islam. He tried to get me back in his confidence.**

02:36:20PM 20 **In 2012, 2013, they put another guy named Omar --**
02:36:24PM 21 **Omar was a character. Same thing, he wanted to kill**
02:36:28PM 22 **Kafirs, but he loved the FBI, and he loved the Saudi and**
02:36:31PM 23 **American governments, which that is like oil and water, to**
02:36:35PM 24 **want to kill Kafirs. Again, no Muslims -- don't just talk**
02:36:38PM 25 **like, "I want to kill everyone."**

02:36:40PM 1 Then he says, "But I love the FBI and the Saudi
02:36:43PM 2 government." He tells me he's got a permit federally to
02:36:46PM 3 possess firearms, but he is a felon. In 2012 he tried to
02:36:49PM 4 get with me to come check out some guns. I said, "I'm
02:36:52PM 5 good, Dude." In 2013, right after I married this sweet
02:36:55PM 6 woman here, Janelle, she was there for it. He came by
02:36:59PM 7 while we were staying at a hotel. He was like, "Oh, man,
02:37:01PM 8 come to my place and check out these guns." I'm like,
02:37:04PM 9 "I'm good, Dude."

02:37:05PM 10 Anyway, so I knew that I was on their radar. Any
02:37:09PM 11 time I went to the mosque certain brothers that didn't
02:37:12PM 12 attend regularly would show up, they would bother me; we
02:37:14PM 13 would have to talk; we would have to go out for coffee,
02:37:16PM 14 whatever; they were my social worker at the mosque,
02:37:18PM 15 whatever, the guardian, whatever you want to say. It was
02:37:21PM 16 very annoying, very burdensome, and I didn't get to meet
02:37:24PM 17 and talk about Sheik Mohammad. It was annoying all the
02:37:28PM 18 way around.

02:37:28PM 19 And I would tell them that. I told Jason the
02:37:31PM 20 mechanic, all these guys, "Look, man, I really don't want
02:37:34PM 21 to hang, guys. You guys ignore me." I didn't say
02:37:36PM 22 "ignore." I said, "I know you all are agents," whatever,
02:37:39PM 23 "just leave me alone."

02:37:40PM 24 At one point -- at one point when the Mexican kid, he
02:37:46PM 25 has got Asperger's, we didn't know it at the time, he came

02:37:49PM 1 to live with us. He had been beaten by his mom and dad.
02:37:53PM 2 He had been told he can't wear his Muslim clothes. He had
02:37:56PM 3 been told he can't recite the Koran in the house. He had
02:38:01PM 4 been told he had to celebrate Christmas, and that he has
02:38:02PM 5 to be a Catholic. Anyway, he was like, "I want to come
02:38:04PM 6 live with you." I just thought he was a little different.
02:38:06PM 7 I didn't know anything about Asperger's.

02:38:10PM 8 So anyway, he comes to the house, and there is a big
02:38:12PM 9 hubbub in the intelligence community. At some point his
02:38:17PM 10 social worker/guardian guy that was detailed to him at the
02:38:19PM 11 mosque, his name is Daytona, called and was just like,
02:38:21PM 12 "Hey, man" -- I called him up and said, "Now, why are you
02:38:23PM 13 telling this guy I'm an agent? You know I'm not an agent.
02:38:26PM 14 We know you're an agent. You are working for the
02:38:28PM 15 government and watching this kid. So what's up?"

02:38:30PM 16 He tells me about his Asperger's and things like
02:38:33PM 17 that. I thought he had some bowel problems because of the
02:38:35PM 18 way he was using the bathroom. I said, "Well, does he
02:38:36PM 19 have anything that you know about with bowel problems or
02:38:38PM 20 anything?" He said, "No, no."

02:38:40PM 21 So we read up more on Asperger's, and we started to
02:38:44PM 22 understand who he was more. Anyway, he wanted to go check
02:38:48PM 23 out these nuclear towers. And we were broke at the time.
02:38:51PM 24 That is all in the information, too. We were broke at the
02:38:55PM 25 time.

02:38:56PM 1 He started being like, "I will walk up there." And
02:38:58PM 2 it is across the highway and up a mountain. He is a
02:39:01PM 3 really nice kid, very soft, gentle, you know, things like
02:39:04PM 4 that. And so I'm like, "All right. We will check it
02:39:06PM 5 out." So we drove up there. We heard there is a
02:39:08PM 6 restaurant. We drove up there. It was important to him.
02:39:09PM 7 We drive up there and we kind of drive around and come to
02:39:12PM 8 a parking lot, talk to this guy, "Is there a restaurant?"
02:39:15PM 9 this and that, "Are they functioning?" anything like that,
02:39:18PM 10 and got his curiosity out of the way.

02:39:20PM 11 There is some more reports in there about someone
02:39:23PM 12 having to call the cops to get someone to leave. He
02:39:26PM 13 wanted to go tell the farther-away neighbors about Islam,
02:39:28PM 14 that's the duty of a Muslim. I said, "Oh, we have talked
02:39:31PM 15 to the neighbors." "Which ones?" I said, "Sometimes
02:39:33PM 16 those ones, and those ones, these ones." He's like, "What
02:39:34PM 17 about the ones over there?" whatever. I said, "Well, we
02:39:37PM 18 haven't gotten that much with them because" -- "you know,
02:39:40PM 19 we will see how it goes." He goes, "We should go talk to
02:39:44PM 20 them." "All right. All right, man."

02:39:45PM 21 So we go off and walk up the road. And there is a
02:39:53PM 22 lady in a gold SUV that waves and talks to Janelle now,
02:39:56PM 23 though we never met. She was on the way out. And she
02:39:59PM 24 stopped on the road, and saw us. I said, "Yeah, this is a
02:40:02PM 25 brother. He's from Portland. He just felt like he wanted

02:40:04PM 1 to tell the neighbors. It is his duty as a Muslim to tell
02:40:08PM 2 the neighbors about Islam," and things like that. She
02:40:11PM 3 said, "Oh, cool, cool." She is talking to us. She has a
02:40:14PM 4 dad who has lung cancer, and he is 86, things like that.
02:40:17PM 5 She owns an espresso stand.

02:40:19PM 6 Anyway, she says, "Nice to meet you," this and that.
02:40:21PM 7 "That is my house. That is my brother's house." And this
02:40:23PM 8 is like a niece or nephew down here. She said, "Go visit
02:40:26PM 9 with him." "All right. Cool."

02:40:28PM 10 So we walk down the road. And I tell the brother,
02:40:30PM 11 "Maybe we should come back later." It was nighttime, you
02:40:33PM 12 know. I know how they look at us. He always wears the
02:40:36PM 13 traditional period. So when I would hang out with him, he
02:40:39PM 14 would always tell me -- if I had something else on, like a
02:40:42PM 15 button shirt, or just shorts on, he would be like, "Put on
02:40:44PM 16 your other clothes," you know.

02:40:46PM 17 So we get parallel with this house on the road here,
02:40:49PM 18 and it is a big, like, mansion-type house with a big yard.
02:40:53PM 19 About that time, it was like, "All right. We can come
02:40:56PM 20 back some other time. It looks like they are sleeping
02:40:57PM 21 over there." But then they got -- the motion lights come
02:40:59PM 22 on and the dog starts barking. The lady comes out the top
02:41:03PM 23 balcony, whatever, and a young kid, probably the son,
02:41:06PM 24 maybe 18, or whatever, comes out the bottom sliding glass
02:41:08PM 25 door. And they are like, "Who are you guys?" They

02:41:10PM 1 obviously knew who we were. They already had a
02:41:13PM 2 predisposition to not liking us, you could tell.

02:41:16PM 3 I said, "Okay. I guess we will go talk to them." We
02:41:18PM 4 tell them, "Oh, yeah, we are the neighbors," whatever,
02:41:20PM 5 "This is the brother, and he just wanted to tell you guys
02:41:22PM 6 about this or that." The conversation didn't even go that
02:41:24PM 7 far, because the mom is like, "I got this, Tony," or
02:41:27PM 8 whatever his name was, "I am calling the cops." I said,
02:41:29PM 9 "Oh, no, it's cool. We will leave." We didn't get
02:41:32PM 10 introductions like, "Oh, this is this guy, and I'm this
02:41:34PM 11 guy." It was like, "I am calling the cops." "Oh, we are
02:41:37PM 12 out of here."

02:41:38PM 13 By the time we got home, we are sitting down to eat,
02:41:40PM 14 seven sheriff officers come knocking at the door. I said,
02:41:44PM 15 "Come on in, guys." They come in. They say, "We got a
02:41:47PM 16 call," this and that, so on and so forth, blah, blah,
02:41:50PM 17 blah. I said, "Yeah. Okay. We just went for a walk. We
02:41:54PM 18 weren't trying to trespass or bother anyone."

02:41:57PM 19 This was about the half dozen times we had the cops
02:41:59PM 20 called on us. Originally, when we first moved there, me
02:42:02PM 21 and Janelle went for walks with the kids. And cop cars
02:42:05PM 22 would cruise the road. We were like, "That is weird."
02:42:06PM 23 And it started becoming like a regular thing, if we went
02:42:09PM 24 for a walk, the cop car would come.

02:42:12PM 25 I already knew they were watching us. We talked

02:42:14PM 1 about it. I've talked to all of the sheriffs. One time
02:42:15PM 2 when we were outdoors we had the doors kicked in and they
02:42:17PM 3 raided our house. They thought we needed help from them
02:42:19PM 4 or something like that. I called when I got home, and we
02:42:24PM 5 talked. He said, "From now on, if we get a call on you,
02:42:26PM 6 we are going to call you first to make sure we need to
02:42:28PM 7 come check it out," because they have gotten calls before,
02:42:31PM 8 like the one with Tom and the shotgun.

02:42:33PM 9 I have been to Tom's house a hundred times. We were
02:42:35PM 10 actually neighbors for a year and a half. I cut wood for
02:42:39PM 11 him, we made food for him, we hung out with them. He had
02:42:41PM 12 borrowed an egg incubator. He said, "You can come pick it
02:42:43PM 13 up. My duck eggs, my goose eggs aren't hatching," or
02:42:46PM 14 whatever.

02:42:46PM 15 I go and pick it up. We do our usual spiel. We talk
02:42:49PM 16 about the weather. We talk about his kids. We talk about
02:42:51PM 17 what he is watching on TV.

02:42:53PM 18 If we are short on time, let me know. I want to get
02:42:57PM 19 back to my family. I don't feel like you understood
02:43:00PM 20 completely what was going on.

02:43:02PM 21 So anyway, we get to talking, get the incubator, talk
02:43:05PM 22 for a half hour, a long time. We are both talkers, me and
02:43:06PM 23 Tom. He is about 5'6", 380 pounds, very patriotic,
02:43:13PM 24 ex-military. He got shot in Somalia.

02:43:15PM 25 THE COURT: You need to slow down. The court

02:43:17PM 1 reporter is having a hard time keeping up with you.

02:43:20PM 2 THE DEFENDANT: All right. He is heavy set. He
02:43:21PM 3 got shot in the hip by a Somalian kid in Somalia. He
02:43:25PM 4 attributes that to his weight gain. He has a little bit
02:43:28PM 5 of animosity about that towards Muslims, or whatever.

02:43:32PM 6 Anyway, just addressing the shotgun and the AK. The
02:43:57PM 7 AK incident was about a year before that when we were
8 living next to him. About a year before this incident
02:43:58PM 9 with the shotgun, I had come over to Tommy's place,
02:44:03PM 10 splitting wood, visiting, because Janelle was out or
02:44:05PM 11 something. I sit down on the couch, which a lot of times
02:44:09PM 12 it would have a gun on it, or whatever, if he had come
02:44:11PM 13 back from hunting. He had a glass case -- a glass gun
02:44:14PM 14 case, right, as you go towards the living room. He had
02:44:19PM 15 all of his guns in there. When he would go hunting he
02:44:23PM 16 would clean them, or whatever. A lot of times he would
02:44:25PM 17 have them on the couch. I would sit down and talk to him.

02:44:27PM 18 He was always hard up. Since his divorce he made
02:44:30PM 19 like fishing weights, and cut firewood, and he was always
02:44:34PM 20 behind on his bills. Anyway, he tells me, "Yeah, I had to
02:44:38PM 21 sell my AK to my son James for the bills." And I said,
02:44:43PM 22 "Oh, Tom, I didn't know you had an AK." We joke like
02:44:46PM 23 this, I am a Muslim, I am his enemy, and he is the
02:44:51PM 24 patriotic American. We are not really enemies. "You
02:44:55PM 25 should have sold it to me." He pipes up in his chair,

02:44:58PM 1 "Oh, yeah, I might have gotten more money." "Obviously, I
2 can't, Tom. I can't have no guns."

02:45:00PM 3 I didn't know he had an AK. I never took any kind of
02:45:04PM 4 notice of his guns. He had a gun case with shotguns and
02:45:06PM 5 rifles. Apparently his AK was kept in his bedroom for
02:45:09PM 6 self-defense. He never talked about it. I never heard
02:45:12PM 7 about it. We never talked about me buying from him. But
02:45:15PM 8 he said, "I sold it to my son James for the bills." I
02:45:18PM 9 said, "Oh, you should have sold it to me," like that. And
02:45:22PM 10 anyway, we went on forever, he was watching the news,
02:45:26PM 11 talking like that.

02:45:28PM 12 So anyway, fast forward to a year later, I go to pick
02:45:32PM 13 up the incubator. He had it like two months. The goose
02:45:36PM 14 eggs, or whatever, have a 35-day incubation period, or
02:45:40PM 15 something, and he went like a week over that. He said,
02:45:42PM 16 "Yeah, I guess they are not going to hatch."

02:45:45PM 17 We talked about this and that for 30 minutes
02:45:48PM 18 probably. We get on our topics, the world of politics or
02:45:50PM 19 world events. He is in a single-wide mobile home from
02:45:54PM 20 like the '70s. And he has a travel trailer here that --
02:46:00PM 21 He has four sons and two daughters. They rotate through
02:46:03PM 22 it, kind of, like who is not in jail, and who needs a
02:46:06PM 23 place to stay in this travel trailer.

02:46:08PM 24 Anyway, we talk and walk to the car, which is at the
02:46:10PM 25 end of the trailer, about 40 or 50 feet from the entrance

02:46:13PM 1 to his house, and we put the thing in the deal -- put the
02:46:18PM 2 incubator in the car, and we are talking about what is
02:46:21PM 3 going on.

02:46:24PM 4 The final part of the conversation is, he said, "I
02:46:27PM 5 guess they just like to fight." I said, "Who likes to
02:46:30PM 6 fight, Tom?" He said, "The Iraqis." I said, "Tom, do you
02:46:33PM 7 see any Iraqis running down the street with armored
02:46:37PM 8 vehicles and machine guns here shooting us?"

02:46:39PM 9 And that was it. There was nothing else said after
02:46:41PM 10 that. And he kind of walks like this, with his hip and
02:46:45PM 11 his weight, right. He walks back to the thing. I know
02:46:47PM 12 exactly what he is doing.

02:46:49PM 13 Pride, or being Irish, or whatever it was, I didn't
02:46:53PM 14 run, which probably would have been advisable. My friend,
02:46:56PM 15 later on, when I told him about it, he said, "What is
02:46:58PM 16 wrong with you? Man, you should have gotten out of
02:46:59PM 17 there." So I stood by the car, knowing exactly what he is
02:47:03PM 18 going to do. He has a shotgun he keeps inside the door,
02:47:05PM 19 and he's got a handgun that he keeps by his washer and
02:47:08PM 20 dryer there. And then he has his gun case.

02:47:08PM 21 He grabs up the shotgun, which I know has buckshot in
02:47:12PM 22 it. He always tells me about it, and different times he
02:47:14PM 23 has to use it. And about 40 or 50 feet away he just puts
02:47:16PM 24 it on me, like this. He doesn't say word one. He just
02:47:19PM 25 puts it on me like this.

02:47:21PM 1 On my insides I am scared, right. Terrified, to be
02:47:23PM 2 honest with you. "What, are you going to shoot me, Tom?
02:47:26PM 3 Are you going to shoot me?" This is when his daughter
02:47:29PM 4 comes out of the trailer. I didn't know she was there.
02:47:32PM 5 She said, "Oh my gosh. What is going on?" I am trying to
02:47:34PM 6 play to that. I have to get out of here alive. "Are you
02:47:38PM 7 going to shoot me in front of your daughter, Tom? Are you
8 going to shoot me in front of your daughter?"

02:47:40PM 9 This is a person that we have cooked for, we have
02:47:42PM 10 taken care of. We have given him rides to his daughter's
02:47:45PM 11 wedding, all this kind of stuff. We are friends,
02:47:48PM 12 whatever.

02:47:48PM 13 So when his daughter comes out, "Are you going to
02:47:51PM 14 shoot me in front of your daughter?" He puts the gun down
02:47:53PM 15 and is like, "I am going to call the cops." At that point
02:47:56PM 16 I am like, "Good."

02:47:56PM 17 I come home, tell Janelle, "Oh, man, this is what
02:47:59PM 18 happened." I figure the cops are going to come. I ask
02:48:02PM 19 him about it. He is saying he is calling the cops. I am
02:48:05PM 20 assuming he is calling the cops. And they are going to
02:48:09PM 21 come and he is going to tell them his story, whatever, and
02:48:11PM 22 that they would come talk to me. They never called. They
02:48:12PM 23 never came by.

02:48:15PM 24 So I thought, "Well, maybe Tom didn't call the cops."
02:48:16PM 25 He was moving to Idaho like a week later. He had some

02:48:19PM 1 pigs and geese and all this stuff, and he was going to
02:48:22PM 2 move to Idaho. His family has some property. He was like
02:48:25PM 3 three months behind, and he was just going to get out of
02:48:27PM 4 there. He was going to stay there and just going to be
02:48:29PM 5 real blessed.

02:48:30PM 6 So I said, "Oh, Tom didn't call the cops. Tom is in
02:48:33PM 7 Idaho." I let it go. But for me, the cops obviously were
02:48:36PM 8 called and got his end of the story. And if they're
02:48:40PM 9 admitting that he pulled a shotgun on me, wouldn't you
02:48:43PM 10 think they would come talk to me? You know what I mean?
02:48:48PM 11 And actually get an idea of what happened.

02:48:50PM 12 Anyway, going back to the cop situation. So after
02:48:53PM 13 the -- Sorry. The neighbor called the cops when we went
02:48:55PM 14 to say hello. And the aunt said, "Go ahead and say hello
02:48:58PM 15 to these guys." And the seven cops came in. That
02:49:01PM 16 following week, someone in that group of neighbors would
02:49:05PM 17 pull into our driveway with that truck and honk the horn
02:49:08PM 18 and cuss and scream. At first I was like -- maybe thought
02:49:11PM 19 it was someone playing jokes, someone that wanted -- like,
02:49:14PM 20 what is going on? I would come out and they would take
02:49:17PM 21 off.

02:49:18PM 22 So we followed them one night to their house, called
02:49:20PM 23 the cops. It took two hours before they sent one guy out.
02:49:23PM 24 I said, "This is the house. They have been pulling in,
02:49:26PM 25 honking, cussing," and so forth. The cop comes out and

02:49:30PM 1 says, "We couldn't find him." I said, "No way. This is
02:49:32PM 2 the truck. This is the house. I want to press some kind
02:49:35PM 3 of harassment charges. He has been doing this several
02:49:37PM 4 times, threatening me with his truck" and so on and so
02:49:40PM 5 forth.

02:49:40PM 6 I left numerous message on whoever the boss of the
02:49:46PM 7 police was in that area that night, like, "Hey, man, you
02:49:51PM 8 know these guys have guns. You know we are not allowed to
02:49:54PM 9 have guns. This guy is coming in here and doing this.
02:49:57PM 10 Please come and do something."

02:49:58PM 11 So he comes back the second time, and says, "Oh,
02:50:00PM 12 well, it was somebody that is not really a resident, so we
02:50:02PM 13 can't tell you who it is. They are not going to do it
02:50:04PM 14 anymore." And they did still do it after that.

02:50:07PM 15 Anyway, another time when the brother was here, the
02:50:12PM 16 autistic brother, when we went up to the nuclear towers --
02:50:17PM 17 On the way out of the nuclear towers we saw the FBI try to
02:50:20PM 18 come in. "Oh, look, they followed us up here."

02:50:23PM 19 Anyway, we went home. He wanted to go to town for
02:50:26PM 20 juice. I'm like, "Man, we don't have money for juice,
02:50:27PM 21 much less for the gas." So he walks into town one day,
02:50:31PM 22 like when I am taking care of the kids or whatever. I'm
02:50:34PM 23 like, "Did you really do it?" He walked to town.

02:50:37PM 24 There was like three dozen or five dozen phone calls
02:50:40PM 25 to the sheriff's office because he walked to town in

02:50:44PM 1 Muslim clothes. It was such a big deal that that
02:50:47PM 2 afternoon a guy from the local Aberdeen paper, a reporter,
02:50:51PM 3 came out, and was over here where the FBI hangs out. I'm
02:50:56PM 4 like, "What is this guy? Another agent?"

02:50:59PM 5 And he finally -- I go, "What's up?" He finally
02:51:02PM 6 comes over, and he's like, "I am a reporter." I go, "What
02:51:04PM 7 do you want?" He was like, "Well, there was" -- he
02:51:07PM 8 basically tells us there was like five dozen phone calls
02:51:10PM 9 about this kid walking to the store. And his editor said
02:51:15PM 10 get some information on it.

02:51:18PM 11 So, all right. So me and the brother talk. He only
02:51:21PM 12 trusts who he trusts. I didn't know he had Asperger's at
02:51:25PM 13 the time. But after reading up on it and experiencing
02:51:28PM 14 this brother's -- Anyway, I am asking, "Do you want to
02:51:32PM 15 talk to the guy?" He is like very suspicious, like, "I
02:51:36PM 16 don't know." And then, "If we decide to talk to you, you
02:51:39PM 17 have to put about this guy's story, what has been going on
02:51:42PM 18 in his life, why he's here, and what happened today."

02:51:45PM 19 Because on his way back from the store, he
02:51:47PM 20 actually -- a cop rolled up on him and said, "Hey, you
02:51:50PM 21 stole something." And the brother, he is a very sweet
02:51:53PM 22 kid. He's like, "I didn't steal anything." The cop
02:51:55PM 23 searches him and stuff like that and lets him go. He just
02:51:56PM 24 wanted to check up on who he was --

02:51:59PM 25 THE COURT: Mr. Franey, do you have a point?

02:52:03PM 1 THE DEFENDANT: Yeah, that we were treated with
02:52:05PM 2 extreme bias because of the topics we talk about. There
02:52:13PM 3 is a gap of information with people who I talk about.
02:52:16PM 4 Like when I use Arabic phrases, people say they get
02:52:21PM 5 sketched out like, "He used an Arabic phrase." A guy got
02:52:25PM 6 pulled off a plane because he is talking Arabic. She gets
02:52:28PM 7 harassed wearing a hijab, like the guy on the plane. A
02:52:32PM 8 guy got 30 days' confinement for ripping a hijab off a
02:52:38PM 9 woman's head on a plane. I would be getting assault. I
02:52:40PM 10 would be getting a hate crime. I would be getting a
02:52:41PM 11 terrorist act -- terrorism.

02:52:45PM 12 Anyway, just going back to the statements you guys
02:52:46PM 13 didn't like, and things like that: July 8th, when the FBI
02:52:50PM 14 guy showed up across the street, I was out in the garden,
02:52:57PM 15 I came in the house, and I told Janelle, "Look at this guy
02:52:59PM 16 over here. Look at this FBI agent," or whatever I said.
02:53:03PM 17 I might have said "gorilla," because he was real buff.

02:53:09PM 18 They had been parked on the road for months now.
02:53:12PM 19 They had been following us to the mosque. At one point I
02:53:15PM 20 got out of the car and walked back to the back of the car
02:53:17PM 21 to talk to the guy that was following us. He made a
02:53:18PM 22 U-turn, got away, and was talking on his mic and stuff.

02:53:21PM 23 They had been staking us out for months. The
02:53:24PM 24 neighbors told us they were staking us out. It made the
02:53:28PM 25 paper because the cops called them. They were sitting on

1 the road over --

02:53:29PM 2 So when I saw him in the garden, I was upset, because
02:53:32PM 3 I thought I recognized him as an FBI agent right away. So
02:53:36PM 4 I went home and told my wife.

02:53:38PM 5 Anyway, backtracking a little, between these times of
02:53:41PM 6 harassment, undue in my opinion, especially at the time, I
02:53:45PM 7 decided the next time they bug me I'm going to ask them
02:53:48PM 8 just to give me money, or to pay my bills, or whatever.

02:53:51PM 9 And my dad said, "Maybe it is your job to invite
02:53:54PM 10 these agents to Islam. Invite them." And I said, "I
02:54:00PM 11 don't know, man. I don't like them for what they do to
02:54:03PM 12 these people." But I know these wonderful people on a
02:54:06PM 13 mass scale. And what they have done to me, and how they
02:54:10PM 14 have made mosque really not really a very enjoyable
02:54:14PM 15 experience, unless you find one that is not on their radar
02:54:16PM 16 or something.

02:54:17PM 17 So anyway, he comes, I ask him if he is in the
02:54:21PM 18 military. He says, "No." I said, "Do you work for the
02:54:23PM 19 government?" "No." I say, "Do you work for the feds?"
02:54:25PM 20 "No." I said, you know what, I am just going to go with
02:54:28PM 21 it. And I did. And we talked. And I got in his face
02:54:34PM 22 about the Islamic State and stuff like that.

02:54:37PM 23 Eventually he walked back over there to weed-whack
02:54:41PM 24 the yard. My wife says, "Take it easy. You want these
02:54:44PM 25 people to be Muslim? Talk nice," and things like that.

02:54:46PM 1 So she got me some dates and some juice. It was in
02:54:49PM 2 July. It was hot, he was bald. He actually came over for
02:54:52PM 3 something for his head, a wet rag.

02:54:55PM 4 So I go over there. And it states in the paper that
02:54:56PM 5 I showed him ISIS propaganda. I showed him two videos.
02:55:02PM 6 One was a seven-year-old girl holding her doll, with an
02:55:07PM 7 European-style beret, talking about what her life is like,
02:55:11PM 8 what her food is like, and that she would never --
02:55:16PM 9 Someone is asking her, "Have you been eating?" this and
02:55:22PM 10 that. She was like, "Where would I get these things?"
02:55:22PM 11 You know, because they have no food over there. You can
02:55:25PM 12 see the neighborhood is bombed. She talks about what
13 happened to her family.

02:55:27PM 14 And they ask her, "Well, if you sign a deal with
02:55:34PM 15 Assad, you can have whatever you want." She is like, "No,
02:55:37PM 16 I will never do that." They say, "Well, the scholars say
02:55:41PM 17 to forgive Assad," and all of that. And she said, "I will
02:55:44PM 18 forgive anyone, but not Assad."

02:55:46PM 19 You have to imagine her neighborhood has been blown
02:55:49PM 20 up, friends have been killed. She says, "That is silly.
02:55:53PM 21 I would never do that."

02:55:56PM 22 THE COURT: We have to wind up.

02:56:00PM 23 THE DEFENDANT: All right. So this was the
02:56:01PM 24 propaganda video they said was ISIS propaganda, was the
02:56:03PM 25 seven-year-old girl saying -- They said, "What if

02:56:06PM 1 **everyone signs a deal?" She said, "Fine, then it will**
02:56:10PM 2 **just be me, and God is enough for me. No big deal." And**
02:56:13PM 3 **then she says, "I'll collapse." Like, "Enough. I am**
02:56:15PM 4 **finished. I am done with this interview." She is a very**
02:56:18PM 5 **sweet girl, very intelligent. You just don't meet**
02:56:22PM 6 **seven-year-olds like this every day.**

02:56:24PM 7 **And then the other video was a Sudanese kid in the**
02:56:26PM 8 **'90s who was orphaned or left to be orphaned by his family**
02:56:33PM 9 **when he was very young. He grew up on the street reciting**
02:56:34PM 10 **the Koran. And at five he had it memorized. He would**
02:56:38PM 11 **give big talks to over 100,000 people.**

02:56:41PM 12 **There is a lot more about this person. His name is**
02:56:44PM 13 **Sheik Sharif. He is still alive to this day.**

02:56:46PM 14 **So I showed him those two videos. And this is the**
02:56:47PM 15 **ISIS propaganda videos they are talking about.**

02:56:50PM 16 **Fast forwarding to the statements that I seemed to**
02:56:53PM 17 **have some mental health issues or some major violent**
02:56:56PM 18 **tendencies. Number one, I am 34. I have worked in the**
02:57:00PM 19 **fishing industry since 18. I have been going to bars**
02:57:03PM 20 **since I was 18. I have worked in the construction**
02:57:05PM 21 **industry. I've been in the military. I was a football**
02:57:07PM 22 **player. I never have been in a fistfight or punched**
02:57:11PM 23 **someone or kicked someone in my entire life. I think that**
02:57:13PM 24 **says a lot. Other than when I boxed, but with gloves in a**
02:57:15PM 25 **gym with other boxers, for like six months when I was 15.**

02:57:18PM 1 The statements -- I am not supposed to say this: I
02:57:22PM 2 assumed this guy was an FBI agent. So he left his
02:57:27PM 3 weed-eater. When he came back a couple of weeks later, I
02:57:29PM 4 hadn't really used it. So he weed-eated some stuff for
02:57:33PM 5 me.

02:57:33PM 6 When I came out, he said, "You want to check out what
02:57:35PM 7 I do?" I said, "Is it lucrative?" He said, "Yeah." I
02:57:38PM 8 said, "Is it legal?" He said he didn't think so.

02:57:42PM 9 So I went along with him, assuming, as before, they
02:57:46PM 10 wanted me to buy guns from them. After the first trip, I
02:57:51PM 11 was a little sketched out when he tried to give me all
02:57:54PM 12 that money. He said, "Take it for your wife." My wife
02:57:59PM 13 said, "Take it if they are going to offer it." So after
02:58:02PM 14 that, I did.

02:58:03PM 15 What really would have worked out more for us is if
02:58:05PM 16 he just paid the bills on the trips.

02:58:08PM 17 But after the second trip I didn't want to go
02:58:11PM 18 anymore. Like I said, I went to Olympia to do some day
02:58:15PM 19 labor. Because when I met him in July -- I had taken the
02:58:18PM 20 summer off. We had Dowla on May 21st. I was putting in
02:58:24PM 21 the garden. And Janelle was recovering from that. And I
02:58:27PM 22 was thinking about taking the summer off, or maybe later
02:58:29PM 23 on, like July, August, go tuna fishing.

02:58:32PM 24 When I met him, I said, "You know what, the garden
02:58:35PM 25 will be enough. Whatever the FBI or this group has

02:58:38PM 1 proposed, we will supplement what we need until we get to
02:58:41PM 2 the next season of harvest or fishing."

02:58:44PM 3 But when I went to Olympia, because I decided, you
02:58:48PM 4 know, I don't want to mess around, we need some diapers,
02:58:49PM 5 we needed a phone card --

02:58:51PM 6 THE COURT: I have read all of that stuff. I
02:58:54PM 7 know that story.

02:58:55PM 8 THE DEFENDANT: I didn't know if it was in there.
02:58:57PM 9 I wrote a twelve-page letter, and it got condensed to
02:59:01PM 10 about three and a half, because they didn't like some of
02:59:03PM 11 the stuff I put in there.

02:59:03PM 12 THE COURT: You have one minute to say whatever
02:59:04PM 13 you want to say.

02:59:05PM 14 THE DEFENDANT: All right. The statements about
02:59:06PM 15 being violent, and so on and so forth, was Brian prodding
02:59:10PM 16 me and me prodding him. I talked more about Pat Tillman,
02:59:13PM 17 and what happened to him, and why. I talked more about
02:59:16PM 18 Islam. I talked more about what is going on in the world.
02:59:19PM 19 I talked more about my kids, and fishing, so on and so
02:59:21PM 20 forth.

02:59:22PM 21 But me and him, he would make condescending and
02:59:24PM 22 provocative remarks, or I would, and we would go back and
02:59:28PM 23 forth sometimes. As our relationship carried on, the
02:59:31PM 24 first trip I called him a federal agent several times. He
02:59:35PM 25 got upset verbally. He talked about if it wasn't for how

02:59:39PM 1 I met you, I might smash you up the way I did this guy
02:59:43PM 2 when he was 17, and they had to fix up his front left eye
02:59:48PM 3 lobe (sic), so on and so forth. So I said, "All right."
02:59:49PM 4 He was touching on that. "We will let it go." All
02:59:53PM 5 throughout I made veiled comments, as they called it. All
02:59:55PM 6 throughout the relationship I made veiled comments to him
02:59:58PM 7 and to his associates. Another time he got pissed when I
03:00:02PM 8 made a comment to his buddy.

03:00:03PM 9 Anyway, just cutting to the chase, the night that we
03:00:07PM 10 were supposed to buy the guns was the second time we had
03:00:09PM 11 come to the mosque. He had claimed that he had become
03:00:12PM 12 Muslim, and things like this, and he wanted to learn. It
03:00:15PM 13 is in the phone calls that they didn't give you in the
03:00:17PM 14 report. But they didn't transcribe phone calls from like
03:00:20PM 15 July to December. But from December and January they just
03:00:22PM 16 transcribed some phone calls, the ones where I am talking
03:00:26PM 17 with Janelle, my sister, other friends and family, about
03:00:30PM 18 these guys being FBI agents, and how bad I would feel if
03:00:34PM 19 they really weren't, being that he is supposed to become
03:00:37PM 20 Muslim, and stuff like that.

03:00:39PM 21 So I took him to the mosque the first time. He felt
03:00:42PM 22 really bad, because at first he felt uncomfortable being
03:00:45PM 23 there. But everyone was so nice to him. He talked about
03:00:49PM 24 how everyone was so nice to him.

03:00:50PM 25 Anyway, my buddy gave him \$40 to go eat. He was

03:00:53PM 1 like, "Why did he give us money to go eat? I said, "He is
03:00:56PM 2 trying to be nice and encourage that kind of attitude."

03:01:00PM 3 The second mosque trip, they brought a female agent,
03:01:03PM 4 which was also talked about on the phone with me and some
03:01:05PM 5 people, which they didn't give you. It shows that we kind
03:01:08PM 6 of believed they are agents.

03:01:09PM 7 After five years of harassment -- And I know it was
03:01:12PM 8 wrong. I am sorry about it, mostly because of what
03:01:15PM 9 Janelle and the kids have gone through, and wasting you
03:01:19PM 10 guys' time. I don't really like wasting my life in jail,
03:01:21PM 11 but mostly for you guys' time. I'm sorry for it. But
03:01:22PM 12 they had harassed me for five years.

03:01:24PM 13 And I had made a decision before that, like, next
03:01:26PM 14 time I am just going to, you know, do that back.

03:01:29PM 15 I had no idea that being around a gun or touching a
03:01:33PM 16 gun constituted possession. Like you said, we were raised
03:01:35PM 17 with guns. I mentioned about the shooting in the Army. I
03:01:40PM 18 left out -- it is in this one, about my uncle, he was a
03:01:44PM 19 highway patrolman. He would show us how you pop the can
03:01:47PM 20 up and shoot it in the air. He was kind of fancy like
03:01:50PM 21 that, Uncle Mike. At the cabin we would always --

03:01:52PM 22 Anyway, so that night when we are going to buy the
03:01:57PM 23 gun, or whatever, I had no intention of ever getting guns
03:02:01PM 24 from these guys, from before I even talk to them.

03:02:03PM 25 THE COURT: I know the story. I know the story.

03:02:09PM 1 THE DEFENDANT: Can I say one more thing?

03:02:12PM 2 THE COURT: Sure.

03:02:12PM 3 THE DEFENDANT: The thousand round things, that

03:02:15PM 4 he is trying to say I was researching the thousand rounds

03:02:16PM 5 for, was because after I said, "I'm not taking the gun,"

03:02:19PM 6 he squeezed me and said, "Quit f-ing with me." He is

03:02:23PM 7 strong. He lifts 500 pounds, bench press. I said, "All

8 right. All right. What are we going to do about bullets,

03:02:26PM 9 though?" Like, "How am I going to get bullets?"

03:02:28PM 10 I am not trying to be glib about this at all. It is

03:02:32PM 11 just how my life went. And it was stupid. I was

03:02:36PM 12 hypomanic. I have been hypomanic for a long time. I can

03:02:40PM 13 control my thoughts and actions. Maybe I don't use my

03:02:43PM 14 better judgment.

03:02:43PM 15 She told me from day one, "Quit messing with them."

03:02:46PM 16 I said, "I don't think they will arrest me unless I buy

03:02:49PM 17 the guns."

03:02:49PM 18 He said, "I will give you a thousand free rounds."

03:02:52PM 19 That search for the thousand free rounds was like two

03:02:55PM 20 minutes later from when we parted. I said, "Look up a

03:03:00PM 21 thousand free rounds, how much they cost. I want to know

03:03:02PM 22 how bad they are trying to give us this stuff, how bad

03:03:05PM 23 they are trying to give us the guns and stuff."

03:03:07PM 24 It had been five years like this. She looks it up,

03:03:10PM 25 and it ranges from about 399 to, like, 555. "Man, they

03:03:15PM 1 are just trying to give it to us."

03:03:17PM 2 We went to the mosque. There was talks there on
03:03:21PM 3 Friday. It was Friday. After the talks there was an
03:03:23PM 4 African-American brother, he was there trying to
03:03:25PM 5 supplement his bills. The sheik kind of left him hanging.
03:03:29PM 6 And he rides the bus. It is kind of a typical situation
03:03:33PM 7 like that for some of these brothers. The bus had stopped
03:03:36PM 8 running because it was late. They are late-night talks.
03:03:38PM 9 I said, "I am out of here." I gave him 200 bucks.

03:03:41PM 10 As soon as we left the apartment, we are going this
03:03:43PM 11 way, the cops is coming this way. The cop was looking for
03:03:45PM 12 us. It was not a random pullover. He flipped around like
03:03:48PM 13 this, and before he even got his lights on -- He couldn't
03:03:50PM 14 have seen the tabs were expired. As soon as he pulls us
03:03:53PM 15 over, there is about six more cops.

03:03:54PM 16 That's also when I called them -- I said how rude
03:03:58PM 17 they are for messing with us. And I shouldn't mess with
03:04:00PM 18 them either. But these are people that work for the
03:04:02PM 19 community. And I know they are trying to protect everyone
03:04:05PM 20 and stuff. But they have been messing with me for five
03:04:08PM 21 years. They also should have known, based on my comments,
03:04:11PM 22 that I was messing with them. And I assumed they did a
03:04:15PM 23 lot of times.

03:04:16PM 24 THE COURT: All right.

03:04:17PM 25 THE DEFENDANT: I am sorry for any of this. I

03:04:19PM 1 want to go back to my family and take care of them,
03:04:22PM 2 because they are suffering quite a bit.

03:04:23PM 3 THE COURT: Thank you.

03:04:25PM 4 THE DEFENDANT: I'm sorry.

03:04:26PM 5 THE COURT: That's fine. That's fine.

03:04:30PM 6 Obviously, this is an important moment in your life, and I
03:04:36PM 7 wanted you to have the opportunity to speak for yourself.
03:04:44PM 8 I'm not sure I got any insight, beyond the obvious, from
03:04:50PM 9 our discussion. It is an important part of the
03:04:56PM 10 sentencing, and you get a chance to talk and say what you
03:05:00PM 11 want. No need for apologies.

03:05:06PM 12 The total offense level is 19, the criminal history
03:05:09PM 13 category is 2, the range is 33 to 41 months.

03:05:19PM 14 The seriousness of the offense is people who are not
03:05:31PM 15 entitled to possess guns, especially assault guns,
03:05:39PM 16 automatic machine guns, is a serious offense, for obvious
03:05:46PM 17 reasons. And I don't think I need to reiterate the
03:05:57PM 18 position of the community at large for people who have
03:06:05PM 19 been prohibited from possession of weapons is serious, and
03:06:19PM 20 it is, in my judgment, not overstated, the overlay of your
03:06:28PM 21 political views and your specific threats to law
03:06:40PM 22 enforcement, military, and the like.

03:06:51PM 23 I am somewhat convinced that your forced speech is
03:07:09PM 24 attributable to mental illness. That may be a militating
03:07:21PM 25 consideration. It can compound. I don't know if

03:07:36PM 1 Mr. Franey is a ticking time bomb. He is not a jovial
03:07:44PM 2 trickster. He is not a humorist, steeped with sarcasm.
03:08:00PM 3 He believes in what he is saying in these rants.
03:08:29PM 4 It is tempting to lock Mr. Franey up and throw away
03:08:39PM 5 the key, as the government advocates, for ten years,
03:08:46PM 6 because the ramifications for a wrong prescription is
03:08:56PM 7 devastating. Under the circumstances of this case, I
03:09:06PM 8 can't do that. Nor will I dismiss this case with an
03:09:13PM 9 18-month sentence.
03:09:26PM 10 It is a case that has to be decided, not on
03:09:31PM 11 statistics, the fact that Mr. Franey is a first-time
03:09:38PM 12 felon, that recidivism rates are, on average, lower for
03:09:49PM 13 first-time offenders. Just as in the Johnson cases that
03:09:57PM 14 we have resented, the recidivism rate is, what,
03:10:02PM 15 70 percent, something like that. The worst of the worst,
03:10:04PM 16 and they are coming back to jail after a short time out.
03:10:13PM 17 So it is not about math. It is not about calculus. It is
03:10:20PM 18 a deeper analysis.
03:10:29PM 19 I am sympathetic to the characteristics of the
03:10:33PM 20 defendant. He loves his family. That's palpable.
03:10:47PM 21 He does not have a governor on either his tongue or
03:10:55PM 22 perhaps on his mind, on his thoughts. Because of that
03:11:08PM 23 proclivity, it is my judgment that, as to Count 5, the
03:11:19PM 24 defendant shall be committed to the custody of the United
03:11:21PM 25 States Bureau of Prisons for a term of 72 months.

03:11:29PM 1 Upon release from imprisonment, the defendant shall
03:11:32PM 2 serve a three-year term of supervised release, subject to
03:11:35PM 3 standard conditions, as well as the following special
03:11:38PM 4 conditions: The defendant shall participate, as
03:11:42PM 5 instructed, in a program approved by the Probation Office
03:11:45PM 6 for treatment of narcotic addiction, drug dependency, or
03:11:49PM 7 substance abuse, which may include testing to determine if
03:11:52PM 8 he has reverted to the use of drugs or alcohol.

03:11:55PM 9 The defendant shall participate, as directed, in a
03:11:58PM 10 mental health program approved by the United States
03:12:02PM 11 Probation Office.

03:12:03PM 12 The defendant shall submit his person, property,
03:12:06PM 13 house, residence, storage unit, vehicle, papers,
03:12:09PM 14 computers, other electronic communications, or data
03:12:12PM 15 storage devices, or media, or office to a search conducted
03:12:16PM 16 by United States Probation officers at a reasonable time
03:12:19PM 17 and a reasonable manner based upon reasonable suspicion of
03:12:23PM 18 contraband or evidence of a violation of a condition of
03:12:26PM 19 supervision. Failure to submit to a search may be grounds
03:12:29PM 20 for revocation. The defendant shall warn any other
03:12:32PM 21 occupants the premises may be subject to searches pursuant
03:12:37PM 22 to this condition.

03:12:38PM 23 He will undergo an evaluation for domestic violence
03:12:41PM 24 and anger management, and follow all treatment
03:12:43PM 25 recommendations, as directed by the United States

03:12:46PM 1 | Probation Office.

03:12:47PM 2 The defendant shall pay a special assessment in the
03:12:49PM 3 amount of \$100, which shall be due immediately. The court
03:12:53PM 4 finds that the defendant does not have the ability to pay
03:12:55PM 5 a fine.

03:12:59PM 6 Is there any reason why judgment consistent with this
03:13:01PM 7 order should not be entered at this time?

03:13:04PM 8 MR. GREENBERG: None from the government, your
03:13:05PM 9 Honor.

03:13:08PM 10 MR. HAMOUDI: Nothing else, your Honor. Except
03:13:10PM 11 for placement, your Honor. We would like to recommend
03:13:12PM 12 placement, if that's possible.

03:13:13PM 13 THE COURT: Sure.

03:13:14PM 14 MR. HAMOUDI: The Sheridan facility. Also a
03:13:17PM 15 recommendation of RDAP.

THE COURT: RDAP will be recommended.

03:13:29PM 17 THE DEFENDANT: May I have -- Just for one
03:13:31PM 18 second.

THE COURT: What? Sure.

03:13:35PM 20 THE DEFENDANT: I left out one thing. First of
03:13:37PM 21 all, the threat: I just said I never intended to get guns
03:13:41PM 22 from these guys.

03:13:42PM 23 Secondly, during the investigation I had a buddy
03:13:45PM 24 offer me a sidearm -- a relative offered me a sidearm, and
03:13:52PM 25 a group of business associates offered me anything that I

03:13:54PM 1 would like. I told all of them, "No, thank you." During
03:13:57PM 2 the investigation -- And for free. I said, "No, that's
03:14:03PM 3 all right." I mean, I wasn't trying to get guns. I just
03:14:07PM 4 said we were pushing each other's buttons.

03:14:12PM 5 You are really going to send me to prison for six
03:14:17PM 6 years? My kids will be half grown. I have never hurt
03:14:21PM 7 anyone. I have never punched anyone in my life. That's
03:14:25PM 8 all I did.

03:14:28PM 9 THE COURT: Mr. Greenberg, have you reviewed --
03:14:31PM 10 MR. GREENBERG: I have a judgment, your Honor.
03:14:33PM 11 If I could show it to counsel.

03:14:46PM 12 MR. HAMOUDI: I have reviewed the judgment, your
03:14:48PM 13 Honor. No objections.

03:15:10PM 14 THE COURT: The judgment conforms to the court's
03:15:12PM 15 order, and I am signing the judgment at this time.

03:15:19PM 16 Mr. Franey, you have a right to appeal the sentence
03:15:23PM 17 imposed by this court. You have the right to file an
03:15:28PM 18 appeal within 14 days. If you wish to pursue that avenue,
03:15:31PM 19 I urge you to seek the advice of Mr. Hamoudi or
03:15:37PM 20 Ms. Sullivan.

03:15:37PM 21 THE DEFENDANT: We are going to do that.

22 MS. SULLIVAN: Thank you.

23 MR. HAMOUDI: Thank you.

03:15:39PM 24 THE DEFENDANT: Just for my conscience, did my
03:15:42PM 25 speech hurt me? Did it? Because I wouldn't feel good

03:15:46PM 1 **about that.**

03:15:46PM 2 **THE COURT: Court will be at recess.**

3 **(Proceedings adjourned.)**

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1 C E R T I F I C A T E
2
34 I, Barry Fanning, Official Court Reporter for the
5 United States District Court, Western District of
6 Washington, certify that the foregoing is a true and
7 correct transcript from the record of proceedings in the
8 above-entitled matter.9
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12 /s/ Barry Fanning
13 Barry Fanning, Court Reporter
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